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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. A-138

PACIFIC MARITIME ASSOCIATION, a California non-profit corporation and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Petitioners,

vs.

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Appendices

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Appendix A

Title 29 United States Code

Subchapter IV—Liabilities of and Restrictions on Labor and Management

§ 185.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
[June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.]

Title 9 United States Code

§ 9.

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse

party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

[July 30, 1947, c. 392, 61 Stat. 672.]

§ 10.

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

[July 30, 1947, c. 392, 61 Stat. 672.]

§ 11.

In either of the following cases the United States court in and for the district wherein the award was made may

make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

[July 30, 1947, c. 392, 61 Stat. 673.]

California Code of Civil Procedure

Title IX

Arbitration

Chapter 4

Enforcement of the Award

* * *

§ 1285. **Filing Petition for Court Review of Award.**—Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.

§ 1286. **Action by Court.**—If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding.

§ 1286.2. Grounds for Vacating Award.—Subject to Section 1286.4, the court shall vacate the award if the court determines that:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was corruption in any of the arbitrators;

(c) The rights of such party were substantially prejudiced by misconduct of a neutral arbitrator;

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; or

(e) The rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

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Chapter 5

General Provisions Relating to Judicial Proceedings

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§ 1290.2 Summary Hearing—Notice.—

A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given.

Federal Rules of Civil Procedure

Rule 52.

Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the

facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule 56.

Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service

of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. The party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Appendix B

In the

United States Court of Appeals

For the Ninth Circuit

No. 22,670

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
Appellants,

vs.

PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Before: BROWNING and CARTER, Circuit Judges, and *PENCE, District Judge.

*Honorable Martin Pence, United States District Judge for the District of Hawaii, sitting by designation.

BROWNING, Circuit Judge:

This is an action by a local union under section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185,

to set aside an arbitration award rendered under a collective bargaining agreement between the parent union and an employers' association. The district court entered summary judgment against the local. 278 F. Supp. 755 (C.D. Cal. 1967). We reverse.

The Pacific Maritime Association is an organization of steamship, stevedoring, and terminal companies doing business on the Pacific Coast. The International Longshoremen's and Warehousemen's Union is the exclusive bargaining representative of longshoremen in the area. Local 13 is the International's constituent local in the harbor areas of Los Angeles and Long Beach, California. This controversy centers around a member of Local 13, Pete Velasquez.

The Association and the International are parties to a collective bargaining agreement covering substantially all longshore work on the Pacific Coast.[1] Available work is distributed among longshoremen "registered" in accordance with the agreement. Velasquez became a fully registered longshoreman in 1953. He served as an official of Local 13 on "leave of absence" from his longshore employment from 1962 until October 1964, when he returned to active work as a longshoreman. In early December 1964, the employers' association initiated a grievance proceeding against Velasquez, complaining that he had repeatedly caused illegal work stoppages, both as an official of Local 13 and as a working longshoreman, and requesting his "deregistration" pursuant to section 17.81 of the contract.[2]

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1. We are concerned with the agreement in effect during the period of June 16, 1961, to July 1, 1966.

2. Section 17.81 of the agreement provided, in part, "Any employee who is guilty of deliberate bad conduct in connection with his work as a longshoreman or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended, or for deliberate repeated offense, cancelled from registration."

The employers' complaint was processed through the contract grievance procedure, culminating in an arbitration award in June 1965 that "deregistered" Velasquez, depriving him of the opportunity to obtain employment as a longshoreman on the Pacific Coast. Local 13 then commenced this action against the employers' association and the International union to set the award aside.[3]

The arbitrator's award was based primarily upon work stoppages that occurred while Velasquez was acting as an officer of Local 13. As will appear, Local 13's basic contention both in the grievance proceedings and in this litigation is that section 17.81 was not intended to apply to union officers and cannot be applied to them lawfully.

I

Local 13 attacks the arbitrator's award on two theories. The first is that Local 13 is suing in its own right as a party to the grievance proceedings; in that capacity it challenges the award on the grounds specified in section 10 of the Federal Arbitration Act, 9 U.S.C. § 10.[4]

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3. Suit was filed in the Superior Court of the State of California of the County of Los Angeles but was removed by defendants to the United States District Court.

4. Local 13 urges that the award was procured by fraud and undue means, that there was evident partiality and corruption on the part of the arbitrators, and that the arbitrators exceeded their powers by interpreting section 17.81 to apply to union officials as well as to working longshoremen.

Aside from these explicit statutory grounds, Local 13 challenges the award under section 10 on the ground that it is in "manifest disregard" of the National Labor Relations Act (*see* Wilco v. Swan, 346 U.S. 427, 436 (1953)) in that it constitutes an unauthorized modification of section 17.81 of the contract to apply that provision to a union official, it assesses damages against a union official and is a discharge for union activities, and it provides the employers with a means to dominate, coerce, and interfere with Local 13 and to deprive Local 13's members of representation of their own choosing.

Local 13 also argues that, as a party to the proceedings, it is entitled to have the award vacated as contrary to "public policy." *See*

The second theory is that Local 13 is suing as the representative of its member, Velasquez; in that capacity it attacks the award on the ground that the International union did not accord Velasquez his right to fair representation in the grievance proceedings as required by *Ford Motor Co. v. Huffman,* 345 U.S. 330 (1953); *Humphrey v. Moore,* 376 U.S. 335 (1964); and *Vaca v. Sipes,* 386 U.S. 171 (1967).

Although many of the considerations pressed by Local 13 may be relevant to either theory, the legal standards measuring whether a cause of action exists under the two theories are quite different. It is important to note at the outset, therefore, that the local may not challenge the award under the Federal Arbitration Act.

Assuming that the Arbitration Act is part of "the substantive . . . federal law, which the courts must fashion from the policy of our national labor laws" to govern suits under section 301(a) of the Labor Management Relations Act,[5] *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 456 (1957), Local 13 may proceed under section 10 of the Arbitration Act only if it was a "party to the arbitration." 9 U.S.C. § 10. See *Acuff v. United Papermakers & Paperworkers,* 404 F.2d 169, 171 n.2 (5th Cir. 1968). Local 13 was not such a party.

The opening recitation of the collective bargaining agreement is that the contract is one "by and between Pacific Maritime Association (hereinafter called 'the Asso-

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Local 453, Elec. Workers v. Otis Elevator Co., 314 F.2d 25, 29 (2d Cir. 1963). Velasquez's deregistration contravenes public policy, in Local 13's view, because it violates the National Labor Relations Act in the respects just stated.

5. The Supreme Court has not clearly decided this question. *See* Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 564, 577-78 (1960); General Elec. Co. v. Local 205, U.E.W., 353 U.S. 547, 548 (1957); Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 466-69 (1957) (dissent of Frankfurter, J.); Dunau, Three Problems in Labor Arbitration, 55 Va. L. Rev. 427, 431 (1969).

ciation'), on behalf of its members . . . and the International Longshoremen's and Warehousemen's Union (hereinafter designated as 'the Union'), on behalf of itself and each and all of its longshore locals." The contract also declares that "the parties hereto are" the employers' association and the International union. Section 17, which details the grievance procedures, refers to the "parties," the "Union," and the "Employer" (or "Association"). Nowhere in section 17 are the locals mentioned.

The intention to vest control over grievance procedures in the International union on the one hand and the employers' association on the other seems as clear as language could make it short of explicit statement. Thus interpreted, the contract allocates power over grievance procedures in accordance with current notions of the arrangement most conducive to industrial peace. *Local 12405, U.M.W. v. Martin Marietta Corp.*, 328 F.2d 945, 947-49 (7th Cir. 1964); *cf. Black-Clawson Co. v. International Ass'n of Machinists*, 313 F.2d 179, 183-84, 186 (2d Cir. 1962).

As Local 13 points out, its officers handled the presentation of the opposition to the employers' grievance during the first three steps of the grievance procedure, and the opinion of the arbitrator filed at the third stage named Local 13 as respondent.[6] However, there is nothing in the

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6. The grievance procedure provided by the agreement included five steps, which the district court described as follows (278 F. Supp. at 759):

> "(1) a Joint Port Labor Relations Committee having jurisdiction over grievances and disputes that arise in a single port; (2) a Joint Area Labor Relations Committee having jurisdiction over a wider geographical area; (3) arbitration before an Area Arbitrator who has jurisdiction over the same area as the Joint Area Committee; (4) a Joint Coast Labor Relations Committee having jurisdiction over the entire geographical area covered by the collective bargaining agreement; and, finally, (5) arbitration before the Coast Arbitrator."

language of the contract to suggest a difference between the first three stages and the last two—in all five steps the parent union, not the locals or the individual employees, is designated as the party on the union side. Accordingly, Local 13 must be regarded as having acted as the International's agent in the first stages of the proceeding. Moreover, the five-step procedure was a single, continuous, integrated process—the decision reached at the first three stages was supplanted by the disposition of the same grievance at the fourth stage, and this in turn by the arbitration award that concluded the fifth stage.[7] Local 13 was not a party to the final two steps, either formally or in fact.

We conclude, therefore, that Local 13 was not a "party" to the arbitration and may not challenge the award on the grounds available on direct review under the Federal Arbitration Act, assuming the latter statute applies to a section 301(a) suit or furnishes a "'guiding analogy.'" *Engineers Ass'n v. Sperry Gyroscope Co.*, 251 F.2d 133, 136 (2d Cir. 1957).

We turn to Local 13's attack upon the award in its capacity as the representative of Pete Velasquez.

II

The substance of Velasquez's claim is that he was wrongly "deregistered" under section 17.81 of the collective bargaining contract. An individual employee may bring suit for breach of such a contract in a federal district court under section 301(a) of the Labor Management

7. Under the contract the decision of the Area Arbitrator at the third stage was "final and conclusive *except*" (emphasis added) when either party referred that decision to the Joint Coast Labor Relations Committee, and, if this Committee could not agree, to the Coast Arbitrator for review (§§ 17.25, 17.261). The decision of the Coast Arbitrator, however, was "final and conclusive" without qualification (§ 17.27).

Relations Act (*Smith v. Evening News Ass'n,* 371 U.S. 195, 200 (1962)), and such a suit may be brought on the employee's behalf by his union. *Auto Workers v. Hoosier Cardinal Corp.,* 383 U.S. 696, 699-700 (1966).

An employee's right to litigate the merits of a claim that a bargaining agreement has been breached to his injury is limited by the agreement's remedial provisions. "Since the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced." *Vaca v. Sipes,* 386 U.S. 171, 184 (1967). *See Republic Steel Corp. v. Maddox,* 379 U.S. 650, 652 (1965). Accordingly, if the contract establishes an administrative remedy and makes it exclusive, the employee is bound by these provisions, with exceptions to be noted. The threshold inquiry, therefore, is whether the contract involved here provided an exclusive administrative remedy with respect to deregistration for illegal work stoppages that would bar suit by the deregistered employee.

As noted earlier, the contract vested control of the grievance procedure in the International union rather than in the locals or in individual employees. Employer complaints of violation of the prohibition against illegal work stoppages were subject to these procedures. *See particularly,* sections 17.15, 17.52. The contract provided that these procedures were "the exclusive remedy"; and "no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted." Section 17.15. Moreover, fifth-stage arbitration awards, like that involved here, were declared to be "final and conclusive." Section 17.27. The only reasonable conclusion from these provisions is that the administrative procedures detailed in the

contract were intended to provide the exclusive remedy for claims of breach of the provisions regarding illegal work stoppages.

The local argues, however, that it was beyond the arbitrator's power to deregister Velasquez under section 17.81 because the work stoppages for which Velasquez was deregistered occurred while he was an officer of Local 13 and section 17.81 did not apply to union officials.

The opinion in *Humphrey v. Moore,* 375 U.S. 335, 345-48 (1964), does suggest that the right of an individual employee to litigate a breach of contract claim in a section 301(a) action will not be barred by an adverse ruling in an exclusive administrative procedure if the employee's contractual claim was not within the scope of that procedure.[8] To put the matter another way, the authority of the administrative decision makers to decide the issue—their jurisdiction under the contract—is open to challenge by the employee even though the contract purports to vest exclusive control over grievance procedures in his union.

Assuming *Humphrey v. Moore* establishes such a rule, it would not justify judicial review in this case of the merits of the arbitrator's determination that section 17.81 applied to union officials.

Section 17.81 is not a provision conferring authority upon the arbitrator to take action; as we have said, the arbitrator's authority arises from other provisions of the contract. Instead, section 17.81 is a prohibition of certain conduct by employees. An interpretation of this prohibition might be erroneous, but the error would not affect the arbitrator's power to make the decision. For example, it

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8. Rothlein v. Armour & Co., 391 F.2d 574, 577-78 (3d Cir. 1968); Tully v. Fred Olson Motor Serv. Co., [37 Wis. 2d 80,] 154 N.W.2d 289, 294-95 (S.Ct. Wis. 1967). *Cf.* Bieski v. Eastern Auto. Forwarding Co., 396 F.2d 32, 37, 41 (3d Cir. 1968).

was also argued on behalf of Velasquez that his offenses were not "deliberate" within the meaning of section 17.81. The arbitrator found that they were. Even if that determination was incorrect, it was clearly not beyond the arbitrator's power to make.

Moreover, if section 17.81 were a jurisdictional provision, the arbitrator's interpretation of that section still would not be subject to judicial review, in view of other provisions of this contract. Section 17.53 stipulated that "the arbitrators shall have power to pass upon any and all objections to their jurisdiction." The only recourse available if an arbitrator erred in assuming jurisdiction was found in section 17.54: "In the event the parties agree that an arbitrator has exceeded his authority and jurisdiction, he shall be disqualified for any further service." Since the parties bound themselves to accept even jurisdictional determinations of the arbitrator in any given case, the employee is similarly bound.

Finally, Local 13 relies upon the doctrine that although grievance procedures were exclusive and the arbitrator's award final, an employee may sue for breach of contract under section 301(a) if his union violated its duty to represent him fairly. *Vaca v. Sipes, supra,* 386 U.S. at 185-86; *Humphrey v. Moore, supra,* 375 U.S. at 342. "Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." 386 U.S. at 177.

Keeping in mind that when materials lodged with the court permit "a choice of inferences" "the inferences to be drawn from the underlying facts contained in such

materials must be viewed in the light most favorable to the party opposing the motion," *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962),[9] we think a trier of fact might have inferred from the evidence that officials of the International union, motivated in part by hostility toward Velasquez, sacrificed his interests in order to gain a favorable result in another dispute with the employers' association. Without atempting a full summary of the facts permitting such inference, we cite the following.

Shortly before the employers' association instituted proceedings against Velasquez, an officer of the International union (who was also a member of the Coast Committee) asked the president of Local 13 if Velasquez was "still in your hair," and assured him, "Have no worry, son, we will take care of [Velasquez] up here." Before the fifth stage of the grievance procedure commenced, the president of the International, which was to represent Velasquez, told Velasquez, "You're through, you're all washed up." During the presentation at this fifth stage, the International union, through its president, acquiesced in the position of the employers' association that section 17.81 applied to union officials as well as to working longshoremen. On the day the Coast Arbitrator issued the award deregistering Velasquez, he also issued an award in favor of the International union on a grievance concerning the individual packing of heavy sacks. Later the president of the International union told a witness, "they had two arbitrations going and they had a deal working on the belly-packing-sacks matter and the Pete Velasquez case, and they had to sacrifice Pete Velasquez to gain the belly-packing-sacks matter. He then said that they had more at stake on the belly-packing-sacks

9. *See also* Adickes v. Kress & Co., 398 U.S. 144, 157-58 (1970).

matter than they had on the Pete Velasquez case which involved one man where the belly-packing-sacks issue involved many."

We agree with appellees that a breach of the duty of fair representation would not be established merely by proof that the International union "swapped" a concession that section 17.81 applied to union officials for acceptance by the employers' association of the position that the contract limited the individual packing of sacks. In this practical world such issues, susceptible of no absolutely "right" solution, are often resolved by accommodation. Although such a choice might impose additional burdens upon union officials, including Velasquez, these burdens might be outweighed by benefits to working longshoremen. If the choice were motivated by good-faith balancing of interests of different elements within the International union, it might well fall within the "wide range of reasonableness . . . allowed a statutory bargaining representative in serving the unit it represents." *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953). "Conflict between employees represented by the same union is a recurring fact. To remove or gag the union in these cases would surely weaken the collective bargaining and grievance processes." *Humphrey v. Moore, supra,* 375 U.S. at 349-50.

However, a union's freedom of choice between competing interests is "subject always to good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman, supra,* 345 U.S. at 338. It must appear that "the union took its position honestly, in good faith and without hostility or arbitrary discrimination," *Humphrey v. Moore, supra,* 375 U.S. at 350, for the union must "serve the interests of all members without hostility or discrimination toward any." *Vaca v. Sipes, supra,* 386 U.S. at 177.

Recognizing that the materials before the district court would support an inference that if a "swap" occurred it was a good-faith choice between interpretations of two provisions of the contract, the evidence we have cited is also susceptible of a different inference, namely, that the International union, actuated in part by hostility toward Velasquez, elected to sacrifice him for a favorable outcome on the "belly-packing" issue.[10] If a "swap" occurred, and if the deregistration of Velasquez rather than alternative interpretation of section 17.81 was the true consideration, Local 13 would be entitled to judgment.[11] If the duty of fair representation is to stand "as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional powers of redress by the provisions of federal labor

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10. The Association and the International insist that interpreting section 17.81 to apply to union officials was reasonable; Local 13 contends that it was both contrary to national labor policy and "flagrantly against union principles." While it would appear that appellees' construction of the somewhat ambiguous language of section 17.81 was not in itself so unreasonable as to lend support to an inference of bad faith, we do not preclude Local 13 from attempting to make such a showing at trial. If the International agreed to an interpretation patently lacking in merit, this in itself might be evidence that its representation was unfair—to that extent the merits of the issue of contract interpretation are open to judicial examination. *See* Lewis, Fair Representation in Grievance Administration, 1967 Sup. Ct. Rev. 81, 108; Comment, Union's Duty to Fairly Represent its Members in Contract Grievance Procedures, 19 Syracuse L. Rev. 66, 85 (1967); *cf.* Levy, The Collective Bargaining Agreement as a Limitation on Union Control of Employee Grievances, 118 U. Pa. L. Rev. 1036, 1057-58 (1970).

11. Of course, as Vaca v. Sipes, *supra*, makes clear, a union may decide not to initiate a grievance at a member's request, and also may choose not to pursue a member's grievance to the end of the procedure, if its decision is made in good faith, based upon an evaluation of the merits of the employee's claim and of the most advantageous expenditure of the union's energies and resources. *See, e.g.*, Acuff v. United Papermakers & Paperworkers, *supra*, 404 F.2d at 171. What we hold is that a union may not agree with an employer, either expressly or tacitly, to exchange a meritorious grievance of an individual employee for some other supposed benefit.

law," *id.* at 182, the deliberate sacrifice of a particular employee as consideration for other objectives must be a concession the union cannot make.[12] The issue was thus largely one of purpose.

Where motive and intent are central issues, a covert agreement is charged, and the principal alleged participants are aligned with the opposing party, as here, summary judgment is to be granted with great caution; for "it is

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12. The adequacy of the protection afforded individual employees by the "fair representation" standard has been questioned, particularly when such critical interests as the employee's job are at stake. H. Wellington, Labor and the Legal Process 162 (1968); Levy, The Collective Bargaining Agreement as a Limitation on Union Control of Employee Grievances, 118 U. Pa. L. Rev. 1036, 1055 (1970); Lewis, Fair Representation in Grievance Administration, 1967 Sup. Ct. Rev. 81, 106; Comment, The Implications of Vaca v. Sipes on Employee Grievance Processing, 17 Buffalo L. Rev. 165, 172, 181 (1967); Note, Section 301(a) and the Employee: An Illusory Remedy, 35 Fordham L. Rev. 517 (1967); Note, The Duty of Fair Representation and its Applicability When a Union Refuses to Process an Individual's Grievance, 20 So.Car. L. Rev. 253, 260, 268-69 (1968); Comment, Union's Duty to Fairly Represent its Members in Contract Grievance Procedures, 19 Syracuse L. Rev. 66, 84-85 (1967); Comment, Protection of Individual Rights in Collective Bargaining, 14 Vill. L. Rev. 484, 496 (1969); Comment, The Duty of Fair Representation in the Administration of Grievance Procedures under Collective Bargaining Agreements, 1968 Wash. U. L. Q. 437, 445 (1968); Comment, Individual Control over Personal Grievances, 77 Yale L.J. 559 (1968); Comment, Federal Protection of Individual Rights under Labor Contracts, 73 Yale L.J. 1215, 1239, 1241 (1964). *But see* Updegraff, Arbitration and Labor Relations 132 (3d ed. 1970).

In Rothlein v. Armour & Co., 391 F.2d 574, 580 (3d Cir. 1968), the court indicated that in some circumstances "an infirmity less than" a breach of the duty of fair representation might require court examination of the merits of an issue decided in grievance proceedings. *See also* Bieski v. Eastern Auto. Forwarding Co., *supra*. Because we conclude that summary judgment was improper on the legal theory that the International union breached its duty of fair representation, we do not consider whether a lesser "infirmity" might permit an employee to pursue his claim in court after an adverse decision by an arbitrator. Summary judgment is improper if the opposing party would be entitled to prevail under any reasonable construction of the evidence and any acceptable theory of law. Industrial Bldg. Materials, Inc. v. Interchemical Corp., [437 F.2d 1336, 1340] (9th Cir. Nov. 23, 1970).

only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised." *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962).

We think this is a case in which the witnesses should be heard.

Reversed for further proceedings.[13]

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13. The district court entered judgment "confirming and enforcing" the arbitration award as well as dismissing Local 13's complaint. 278 F. Supp. at 773. There was no controversy between the parties to the grievance proceedings—the Association and the International—over the arbitration award. The court therefore limited its review to Local 13's "collateral attack" upon the award. *Id.* Although we do not reach the question because of our disposition of the appeal, we doubt that it is appropriate for a court to enter judgment confirming an award in a suit in which the only controverted issues concern an unsuccessful attempt by a third party to attack the award collaterally.

Petition for Rehearing denied May 14, 1971

Appendix

Entered
Dec. 20, 1967
Clerk, U. S. District Court
Central District of California
By R. L. Byer, Deputy

Filed
Dec. 20, 1967
Clerk, U. S. District Court
Central District of California
By R. L. Byer, Deputy

United States District Court
Central District of California

No. 65-1414-AAH
No. 65-1420-AAH
Civil Consolidated

Decision, Findings of Fact, Conclusions of Law and Order Dismissing Amended Complaint and Granting Summary Judgment

Local 13, International Longshoremen's and Warehousemen's Union,
Plaintiff and Counter-Defendant,
v.
Pacific Maritime Association,
Defendant and Cross-Claimant,
and
International Longshoremen's and Warehousemen's Union,
Defendant and Cross-Defendant.

Petition by local union against employer and parent union to set aside final arbitration award deregistering longshoreman employee, member of both local and parent unions, from the Joint Employer-Union Longshoreman List because of deliberate, repeated and illegal work stoppages

prohibited by collective bargaining agreement between employer and parent union, local union charging no fraud against employer but contending that arbitration award was violative of collective bargaining agreement and that in operation of grievance procedure with respect to deregistered employee parent union was guilty of hostile and arbitrary discrimination and acted dishonestly, arbitrarily, capriciously, and in bad faith, in violation of federal statutory duty of fair representation.

—oOo—

This action was commenced in the Los Angeles Superior Court in September, 1965, by Local 13, International Longshoremen's and Warehousemen's Union, hereinafter referred to as "Local 13", against the Pacific Maritime Association, hereinafter referred to as "PMA", and the International Longshoremen's and Warehousemen's Union, hereinafter referred to as the "ILWU", seeking to set aside a final arbitration award deregistering one Pete Velasquez from the Joint Employer-Union Longshoreman List because of deliberate, repeated and illegal work stoppages prohibited by the ILWU-PMA Pacific Coast Longshore Agreement, which award was rendered by the Coast Arbitrator in the fifth and final stage of the collective bargaining agreement's grievance procedure.[1] Local 13 also attacks the preliminary decision handed down by the Area Arbitrator.[2]

Upon petition by the ILWU the matter was removed to this Court on the ground that we have jurisdiction under Title 28 United States Code, Section 1337, providing that

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1. Opinion and Decision of Sam Kagel, Coast Arbitrator, dated June 29, 1965, Appendix I hereto attached.

2. Opinion and Decision of Germain Bulcke, Area Arbitrator, dated February 13, 1965, Appendix II hereto attached.

the District Court shall have original jurisdiction of any civil action arising under any Act of Congress regulating commerce.[3]

An amended complaint was filed requesting the same relief that had been sought in the state court, and a cross-claim and counter-claim to enforce the final arbitration award has been filed by PMA.

Original jurisdiction of this Court has now been invoked pursuant to Section 301(a) of the Labor-Management Relations Act of 1947, as amended, 29 United States Code, Section 185(a),[4] which provides that suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce may be brought in any District Court of the United States having jurisdiction over the parties without regard to the amount in controversy or the citizenship of the parties. In view of the fact that Local 13 is claiming a violation of an agreement between PMA, an employer, and ILWU, a labor organization, in the maritime industry which obviously affects commerce, this action is clearly within the original jurisdiction of this Court pursuant to the provi-

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3. 28 U. S. C. 1337.
"§ 1337. *Commerce and anti-trust regulations*
"The district courts shall have original jurisdiction of any civil action or proceedings arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

4. 29 U.S.C. 185.
"§ 185. *Suits by and against labor organizations — Venue, amount, and citizenship.*

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

sions of 28 United States Code Section 185(a). Moreover, the Supreme Court has stated on several occasions that under this Section the District Court has jurisdiction to enforce an arbitrator's final award entered under a collective bargaining contract. See Steelworkers v. Enterprise Corp., 363 U.S. 593, 595-596 (1960), Steelworkers v. American Manufacturing Co., 363 U.S. 564, 567, 568 (1960), and General Drivers v. Riss, 372 U.S. 517, 519 (1963).

Defendants PMA and ILWU are parties to the "Pacific Coast Longshore Agreement, 1961-1966", the collective bargaining agreement covering a substantial portion of the longshore work on the Pacific Coast. The contract, in its grievance procedure, sets forth the following formal steps: (1) a Joint Port Labor Relations Committee having jurisdiction over grievances and disputes that arise in a single port; (2) a Joint Area Labor Relations Committee having jurisdiction over a wider geographical area; (3) arbitration before an Area Arbitrator who has jurisdiction over the same area as the Joint Area Committee; (4) a Joint Coast Labor Relations Committee having jurisdiction over the entire geographical area covered by the collective bargaining agreement; and finally, (5) arbitration before the Coast Arbitrator. In the first three steps, the interests of the employees are represented by officials of the local union or unions functioning in the port or area involved. The final two steps of the formal grievance procedure are conducted by officials of the international union. In this case, Local 13 was involved in the three lower steps of the grievance machinery and officials of the ILWU appeared on behalf of the employee in the fourth Joint Coast Committee step and in the final step of arbitration before the Coast Arbitrator.

The Agreement also sets out the procedure for instituting grievances and carrying them forward. If a matter fails

to be resolved at a particular stage, the contract provides that it may be referred to the next step in the formal grievance procedure. However, Section 17.15 of the Agreement clearly provides that awards of the Coast Arbitrator are final and binding without qualification.[5]

The amended complaint asks this Court to vacate and set aside the final Coast arbitration award and a preliminary area arbitration award which have the combined effect of denying further employment to Pete Velasquez, an employee of PMA and a member of Local 13 and the ILWU, by removing his name from the list of registered longshoremen. PMA had sought his deregistration through the grievance procedure on the ground that he had been guilty of deliberate, repeated and illegal work stoppages prohibited by the Agreement. The grievance had traveled through each step of the formal procedure prior to the award of the Coast Arbitrator deregistering Velasquez.

In seeking to upset and vacate the two arbitration awards and to have Velasquez reregistered, Local 13 contends, first, that the arbitration decisions were in violation of the collective bargaining agreement in that deregistration is not permitted under the circumstances of this grievance; and, second, that there were fatal defects in the actual operation of the grievance procedure with respect to Velasquez because of dishonest, hostile, arbitrary and capricious action of the ILWU in bad faith and in violation of its statutory duty of fair representation of employees.

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5. *Pacific Coast Longshore Agreement 1961-1966:*
"17.15. The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted."

Both PMA and ILWU have moved for summary judgment after considerable pretrial discovery, a comprehensive pretrial conference order and voluminous contentions of law and fact have demonstrated that there is no genuine issue as to any material fact. The Court has reached the decision that the motion for summary judgment should be granted but it should be noted that this decision was reached only after the plaintiff exhausted numerous and extensive opportunities to show there were litigable issues of fact on this element of its claim. Among other things in the record before the Court are the pleadings and a jointly approved pretrial order, interrogatories by PMA and answers by Local 13, requests for admissions by PMA and responses by Local 13, defendants' motion and supporting memorandum and plaintiff's response and supporting exhibits including the transcripts of all the arbitration proceedings. The matter was extensively argued by counsel, in writing and orally. Plaintiff has presented the same factual claims several times in the record and in its oral argument. Detailed statement of the factual claims was required by the interrogatories filed by defendants. Additionally, plaintiff has been given repeated opportunity to state and to expand upon its factual claims both in writing and in oral presentation. The Court has reviewed all of this material and concludes that even if every alleged fact that is favorable to plaintiff were true, such facts would not establish any litigable issue, that is, any genuine issue as to any material fact, and would not establish any cause of action for plaintiff. On the contrary the facts, all taken in the light most favorable to plaintiff, establish that the defendants are entitled to summary judgment.

Now the Court, having heard the arguments and having examined all of the files, documents and records herein,

the cause having been submitted for decision, and the Court being fully advised in the premises, makes its findings of fact as follows:

FINDINGS OF FACT

– 1 –

PMA is a duly organized and existing California nonprofit corporation having its principal place of business in Wilmington, California. PMA represents its member steamship, stevedoring and terminal companies for the purpose of negotiating and administering the collective bargaining contracts with the unions representing the stevedoring employees of its member companies. The companies represented by PMA are engaged in commerce, as defined by the Labor-Management Relations Act of 1947, as amended, 29 United States Code, Section 142.[6]

– 2 –

The ILWU is a duly organized and existing labor organization within the meaning of the Labor-Management Relations Act of 1947, as amended, 29 United States Code, Section 152.[7] The ILWU was certified by the National Labor

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6. 29 U.S.C. 142.
"§ 142. *Definitions*
"When used in this chapter —
"(1) The term 'industry affecting commerce' means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce."

7. 29 U.S.C. 152.
"§ 152. *Definitions.*
"When used in this subchapter—
* * *
"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Relations Board on June 21, 1938, as the exclusive bargaining representative for longshoremen on the Pacific Coast.[8] Moreover, it is the exclusive representative for collective bargaining purposes for employees performing longshore work for members of PMA along the Pacific Coast.

– 3 –

Local 13 is one of the ILWU's longshore locals. Local 13 is also located in Wilmington, California, and its members are engaged in longshoring in the Los Angeles and Long Beach harbor areas.

– 4 –

PMA and the ILWU have entered into a collective bargaining contract, entitled "Pacific Coast Longshore Agreement, 1961-1966", governing the wages, hours, working conditions and disciplining of longshoremen employed by PMA members on the Pacific Coast. This agreement also binds Local 13 and its members.

– 5 –

The contract contains a grievance procedure for the resolution of disputes. In the event that a dispute is not settled on the job or does not arise on the job, it then moves to a formal grievance procedure containing the following five steps: (1) a Joint Port Labor Relations Committee having jurisdiction over grievances and disputes arising in a single port; (2) a Joint Area Labor Relations Committee having jurisdiction over a wider geographical area; (3) arbitration before an Area Arbitrator who has jurisdiction over the same area as the Joint Area Committee and enjoys the additional power to pass upon its own jurisdiction; (4) a Joint Coast Labor Relations Committee

8. See 7 N.L.R.B. 1002 (June 21, 1938).

having jurisdiction over the entire geographical area covered by the collective bargaining contract; and (5) arbitration before a Coast Arbitrator who, like the Area Arbitrator, has the power to pass upon his own jurisdiction.

–6–

The contract establishes a group of employees, referred to as Class A longshoremen, who have a priority over other employees in obtaining available longshore work and in securing other benefits.

–7–

Pete Velasquez was a Class A longshoreman from July, 1953 until July 29, 1965 in the Los Angeles-Long Beach Harbor. However, from October 1, 1962 until October 1, 1964, Velasquez served most of his time as a night business agent for Local 13. Velasquez worked primarily as a longshoreman again from October, 1964 until July, 1965.

–8–

During the time Velasquez was a night business agent as well as during the latter part of 1964, various member companies of PMA had filed a dozen charges against Velasquez. On the basis of these twelve complaints, PMA moved to deregister Velasquez by taking the first step in the grievance procedure before the Joint Port Labor Relations Committee (Los Angeles-Long Beach) meeting in December, 1964 after Velasquez had been involved in a dispute on board the S.S. President Quezon.

–9–

At the Joint Port Labor Relations Committee meeting, the parties were unable to resolve the issues involving Velasquez, and PMA accordingly referred the matter to the Joint Area Labor Relations Committee.

– 10 –

The Velasquez grievances were considered but not resolved in the December 14, 1964 meeting of the Joint Area Labor Relations Committee, and the matter was refered to the Area Arbitrator by PMA.

– 11 –

In accordance with the custom in the Los Angeles and Long Beach Harbor area, the employee and the local union were represented in the committee meetings and in the area arbitration by officials of Local 13.

– 12 –

On January 4, 5, and 6, 1965, an arbitration hearing was held before Germain Bulcke, the Area Arbitrator for the Southern California area. Officials of Local 13 participated in that portion of the hearing during which evidence was presented relating to the alleged contract violations committed by Velasquez while he was working as a longshoreman after he had completed his term as night business agent. This portion of the hearing, involving the S.S. President Quezon and the S.S. Michigan, was concluded on January 5, 1965. The balance of the hearing, concerning the complaints against Velasquez for contract violations while he was night business agent, was conducted and completed on January 6, 1965, but officials of Local 13 refused to participate in it.

– 13 –

The area Arbitrator ruled that the proceeding could continue ex parte under the terms of the contract, and this ruling was not challenged anywhere in the subsequent two formal steps of the grievance procedure.

– 14 –

On February 13, 1965, Area Arbitrator Bulcke rendered a decision finding Velasquez guilty of ten of the twelve complaints filed against him, including the complaints concerning the S.S. President Quezon and the S.S. Michigan.

– 15 –

Officials of Local 13 then referred the Velasquez grievance to the Joint Coast Labor Relations Committee, where the employee and union were represented by officials of the ILWU which is customary at this level of the grievance procedure. When the Committee considered the grievance on March 23, 1965, PMA and the ILWU were unable to agree on a resolution of the matter, and it was referred to the final step in the arbitration process, a hearing before Sam Kagel, the Coast Arbitrator.

– 16 –

On April 28, 1965, a hearing was held before the Coast Arbitrator at which the employee and union were represented by officials of the ILWU. The ILWU spokesman took the position that, while a union official could be deregistered for repeated contract violations, deregistration was not warranted under the circumstances of this case. The Arbitrator rendered an award deregistering Velasquez on June 29, 1965 and ordered his name removed from the list of Class A longshoremen.

– 17 –

For several years prior to the Velasquez matter, Germain Bulcke, as Area Arbitrator for the Southern California area, and Sam Kagel, as Coast Arbitrator, were the designated arbitrators who regularly heard grievances arising under this contract.

Local 13 has asserted that the ILWU acted arbitrarily, discriminatorily and in bad faith in processing the Velasquez grievance. More specifically, it contends that this conclusion is warranted on the basis of the following factual claims which the Court, taking all facts in the light most favorable to plaintiff and for the purpose of ruling upon the motion for summary judgment, assumes to be and finds to be true:

A. That the ILWU and the PMA jointly selected the arbitrators and that these individuals were personally well-known to the presidents of the ILWU and PMA.

B. That Mr. Bill Ward, an officer of the ILWU, had a telephone conversation with Mr. Curt Johnston, then the president of Local 13, in November, 1964, in which Ward mentioned "Mickey Mouse", (a commonly used nickname of Velasquez) and the issues and problems of working extended shifts which Velasquez had been raising as a union official and as a working longshoreman. Johnston commented that the problem of working extended shifts still existed, and Ward replied that the ILWU would take care of that difficulty and "handle the mouse up here (in San Francisco)."

C. That the presidents of the ILWU and PMA, who did not ordinarily attend local labor relations committee meetings, attended the one on December 8, 1964, concerning Velasquez' involvement, as a working longshoreman, in the work stoppage on December 1, 1964, on the S.S. President Quezon.

D. That at the meeting on December 8, 1964, the president of PMA made certain proposals regarding

the procedures for processing the Velasquez matter through the grievance machinery and that the president of the ILWU, in evaluating the PMA proposals, stated to representatives of Local 13 that PMA's president was a very determined man once he had taken a hard and fast position.

E. That on January 4, 1965, after the first day of the area arbitration hearing involving Velasquez' conduct while a working longshoreman, including the incident aboard the S.S. President Quezon, had been completed and after Local 13 had indicated its refusal to participate in the further phase of the hearing relating to Velasquez' conduct while acting as a union business agent, there was a telephone conversation between the president of Local 13 and Area Arbitrator Bulcke. During the conversation, Bulcke urged Local 13 to continue with the arbitration and present a case in the defense of Velasquez on the other issues, in the course of which Bulcke is reported to have stated, "We know Pete Velasquez is guilty and he is going to have to receive some kind of penalty."

F. That in the spring of 1965, after the Area Arbitrator had entered his award but before the issues had been heard by the Coast Arbitrator, there was a conversation between Velasquez and the president of the ILWU, Harry Bridges, during which Bridges emphatically criticized Velasquez' conduct, stated that the probable outcome of the coast arbitration would be his deregistration, and asserted that he (Bridges) was the only one who could then help Velasquez.

G. That the president of the ILWU made certain statements from which it could be inferred that the

international union was more interested in a favorable decision on the "belly-packing" issue than on the question of subjecting a union official to deregistration for repeated contract violations, which was the issue involved in the Velasquez grievance.

H. That the PMA gave careful consideration to the decision to attempt to deregister Velasquez as a Class A longshoreman for contract violations while serving as a union business agent.

I. That the ILWU acquiesced in the Coast Arbitrator's award which was "flagrantly against union principles".

J. That, following the Coast Arbitrator's award, the Area Arbitrator talked with the Coast Arbitrator and expressed surprise at the severity of the award and suggested the steps that might be taken to negotiate the re-registration of Velasquez.

K. That the award manifestly disregards the collective bargaining agreement and the law.

– 19 –

The allegations contained in Local 13's amended complaint, to the extent that they are inconsistent with the Findings of Fact herein, are untrue.

– 20 –

The following Conclusions of Law, insofar as they may be concluded Findings of Fact, are so found by this Court to be true in all respects. From the foregoing facts, the Court concludes that:

Conclusions of Law

I

The original jurisdiction of this Court has been properly invoked pursuant to Section 301(a) of the Labor-Management Relations Act of 1947, as amended, 29 United States Code, Sections 185(a).[9]

II

The award of the Coast Arbitrator, the award of the Area Arbitrator, as well as the decisions rendered throughout all stages of the grievance machinery were and are in complete accordance with the terms of the collective bargaining agreement between employer and union, "Pacific Coast Longshore Agreement, 1961-1966", particularly the terms governing the grievance-arbitration procedure.

Each award and decision, "reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is." Humphrey v. Moore, 375 U.S. 335, 351 (1964) relying upon Drivers Union v. Riss & Co., 372 U.S. 517, 519 (1963).

III

The responsibility and duty of every union which, like the ILWU here in this case, is the exclusive bargaining agent in the negotiation and administration of a collective bargaining contract such as "Pacific Coast Longshore Agreement, 1961-1966" here in this case, has been fully and definitely set out by the United States Supreme Court:

> "The undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is

9. Note 4, *supra*. See also Humphrey v. Moore, 375 U.S. 335, 342 (1963); Vaca v. Sipes, 386 U.S. 171, 177 (Prelim. Print, 1967).

> accompanied by a responsibility of equal scope, the responsibility and duty of fair representation. *Syres v. Oil Workers Union,* 350 U.S. 892, reversing 223 F. 2d 739; *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768; *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen,* 323 U.S. 210; *Steele v. Louisville & N. R. Co.,* 323 U.S. 192. 'By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially.' *Wallace Corp. v. Labor Board,* 323 U.S. 248, 255. The exclusive agent's obligation 'to represent all members of an appropriate unit requires [it] to make an honest effort to serve the interests of all those members, without hostility to any . . .' and its powers are 'subject always to complete good faith and honesty of purpose in the exercise of its discretion.' *Ford Motor Co. v. Huffman,* 345 U.S. 330, 337-338."

In this connection "a wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Humphrey v. Moore, *supra* [375 U.S.] at 349, quoting Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953).

Putting it another way, as the Supreme Court has done even more recently, in enlarging upon the teaching of Humphrey:

> "It is now well established that, as the exclusive bargaining representative of the employees in Owens' bargaining unit, the Union had a statutory duty fairly to represent all of those employees, both in its collective bargaining with Swift, see *Ford Motor Co. v. Huffman,* 345 U.S. 330; *Syres v. Oil Workers International Union,* 350 U.S. 892, and in its enforcement of the resulting collective bargaining agreement, see *Humphrey v.*

Moore, 375 U.S. 335. The statutory duty of fair representation was developed over 20 years ago in a series of cases involving alleged racial discrimination by unions certified as exclusive bargaining repres ntatives under the Railway Labor Act, see *Steele v. Louisville & N.R. Co.,* 323 U.S. 192; *Tunstall v. Brotherhood of Locomotive Firemen,* 323 U.S. 210, and was soon extended to unions certified under the N.L.R.A., see *Ford Motor Co. v. Huffman,* supra. Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Humphrey v. Moore,* 375 U.S., at 342. It is obvious that Owens' complaint alleged a breach by the Union of a duty grounded in federal statutes, and that federal law therefore governs his cause of action. E.g., *Ford Motor Co. v. Huffman, supra.*" Vaca v. Sipes, 386 U.S. 171, 177 (Prelim. Print 1967).

The principal issue, then before this Court is the same as the Supreme Court confronted in *Humphrey.* There, a decision rendered in the final stage of a grievance procedure, which had the effect of denying further employment to certain workers through a dovetailing of seniority lists, was charged to be arbitrary and capricious, contrary to the existing practice in the industry and violative of the collective bargaining agreement.[10] The Supreme Court held that a final arbitration award precludes judicial interference in the absence of a showing that the award has been obtained by improper union conduct in disregard of its duty of fair representation.[11]

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10. Humphrey v. Moore, 375 U.S. 335, 340 (1964).

11. Id., at 351.

The undoubted broad authority of a union as the exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the duty of fair representation, a duty derived not from the collective bargaining contract but implied from the union's rights and obligations conferred by federal labor statutes.[12] By its selection as the bargaining representative, the union becomes the agent of all the employees and is charged with the responsibility of representing their interests fairly and impartially.[13] The agent's obligation to represent all members of a bargaining unit requires it to make an honest effort to serve the interests of all members without hostility to any and its powers are subject to complete good faith and honesty in the exercise of its discretion.[14]

Having in mind then that a breach of the statutory duty of fair representation occurs *only* "when a union's conduct toward a member of the collective bargaining unit it arbitrary, discriminatory, or in bad faith", Vaca v. Sipes, 386 U.S. 171, 190 (Prelim. Print 1967), we search throughout the record in the case before us in vain for a factual basis to support any breach of the statutory duty of fair representation by ILWU.

Strictly conclusionary words and phrases abound—fraud, deceitful action, dishonest activity, invidious and irrelevant considerations, corruption, undue means, conspiracy, connivance, hostile discrimination, arbitrary and discriminatory conduct in bad faith. But these are only words and phrases, fright-words, and emotion-packed symbols. They are not facts. Nowhere in the record can we find facts, alle-

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12. Humphrey v. Moore, supra, at p. 342, and Justice Goldberg's concurring opinion at p. 356.

13. Wallace Corp. v. Labor Board, 323 U.S. 248, 255 (1944).

14. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953).

gations of facts, or factual claims to support conduct of the ILWU that is arbitrary, discriminatory or in bad faith, and the mere conclusions are not enough and do not raise a genuine issue as to any material fact. Hardcastle v. Western Greyhound Lines, 303 F. 2d 182, 186 (9th Cir. 1962).

Nowhere in the record can we find any support for plaintiff's attack upon the integrity of the ILWU and of the procedures which led to the Coast Arbitrator's award, the Area Arbitrator's award, and the other three preliminary decisions in the five-step grievance procedure provided by the collective bargaining agreement. Nowhere is there a factual statement, claim or allegation of fraud, deceitful action or dishonest conduct.

As far as this record shows, the factual statements, allegations and claims, taken in the light most favorable to plaintiff, demonstrate the ILWU "took its position honestly, in good faith, and without hostility or arbitrary discrimination"; that it acted "upon wholly relevant considerations, not upon capricious or arbitary factors"; and that there was "no breach by the union of its duty of fair representation". Humphrey v. Moore, *supra* [375 U.S.], at 350.

The record does show that the ILWU fought on behalf of Velasquez and Local 13 against PMA in the five steps of the grievance procedure vigorously and at times even vituperatively, but always valorously and valiantly.

The fact that the fight was ultimately in vain does not make it procedurally invalid. Local 13 and Velasquez through their agent ILWU have both had their "day in court"—fully, fairly, and finally, with their rights meticulously protected and honored. They lost, but only after a bitter battle in an open arena before two honest Arbitrators —Area and Coast—under fair rules.

Our "instant replay" of the battle confirms the decisions and awards in the five-step grievance procedure. The Losers, Local 13 and Velasquez, are not entitled to a new and different fight in a new and different arena under new and different judges—the courts—just because they lost in the battle and in the arena and before the judges specifically provided by the collective bargaining agreement. The decisions and awards already reached "after proceedings adequate under the agreement" are final and binding upon the parties. Humphrey v. Moore, *supra* [375 U.S.], at 351.

IV

In taking up each of the factual claims which the Court has assumed to be and found to be true in Finding of Fact 18 above, the Court concludes as follows:

A. The ILWU Did Not Breach Its Duty of Fair Representation by Its Acts in Selecting the Arbitrators.

Plaintiff asserts a *Humphrey* discrimination on the ground that Germaine Bulcke, the Area Arbitrator, and Sam Kagel, the Coast Arbitrator, were selected as arbitrators by the presidents of PMA and the ILWU, J. Paul St. Sure and Harry Bridges respectively. While Local 13 did participate in selecting the area arbitrator prior to 1960, this authority was withdrawn by Section 17.51 of the contract which provides that the designation of arbitrators thereafter is to be made by the parties to the agreement, PMA and the ILWU.[15]

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15. *Pacific Coast Longshore Agreement (1961-1966)*
"17.51. The parties have an arbitrator for each of the four said port areas and a Coast Arbitrator. If any arbitrator shall at any time be unable or refuse or fail to act, the parties shall select his successor or substitute. If a vacancy occurs and the parties fail to agree on the successor or substitute, he shall be appointed at the request of either party by Mr. E. D. Conklin."

This method of selecting the arbitrators is not attacked. Instead, plaintiff asks this Court to substitute its judgment regarding the qualifications of the arbitrators for the judgment of the parties who have agreed to submit their disputes to those particular arbitrators. Clearly the Court should not do this. See United Steelworkers v. Enterprise Corp., 363 U.S. 593 (1960).

In any event the record demonstrates that the arbitrators are eminently well qualified. The admissions in the pretrial conference order show that Germain Bulcke became Area Arbitrator for Southern California in 1960 (Admitted fact No. 26) and that during the period Germain Bulcke has served as Area Arbitrator he rendered awards in a substantial number of controversies. (Admitted fact No. 29.) They further show that during and after the Velasquez controversy Local 13 has not sought to disqualify Bulcke from further service as Area Arbitrator. Admitted facts Nos. 26, 27 and 28 in the pretrial conference order indicate that Germain Bulcke had a long history of contact with the stevedoring industry on the Pacific Coast, including working as a longshoreman and administering the collective bargaining contracts as an officer of Local 10 and as vice president of the ILWU. The fact that Germain Bulcke was eminently well qualified to consider and resolve disputes arising out of the Pacific Coast Longshore Agreement in no fashion shows a lack of fair representation of Pete Velasquez or Local 13 by the ILWU.

Similarly, Local 13 is attacking the appointment of Sam Kagel as Coast Arbitrator. The Court may take judicial notice of the significant facts. He is a full professor at the School of Law at the University of California at Berkeley (Boalt Hall) and a noted writer in the field of arbitration law. Professor Kagel served on the California Law Revision

Commission that drafted the Arbitration Act that was enacted by the California State Legislature and codified in the California Code of Civil Procedure, Section 1280, et seq. Professor Kagel has served as arbitrator in numerous labor disputes arising in a wide variety of industries including the recent dispute involving the agricultural workers in the central California valleys. Admissions 31, 32 and 33 indicate that Professor Kagel has rendered a number of decisions in disputes arising under the PCLA [ILWU-PMA Pacific Coast Longshore Agreement] and that Local 13 has not sought to disqualify Sam Kagel from further service as Coast Arbitrator. Clearly the ILWU did not breach its duty of fair representation by participating in the selection of Professor Kagel as the final arbitrator in labor disputes arising in the stevedoring industry on the Pacific Coast of the United States.

It should be noted that Local 13 concedes that it failed to initiate steps to disqualify Bulcke as an arbitrator following his decision to deregister Velasquez. In view of the fact that Bulcke was appointed in 1960 pursuant to the 1960 revisions in the grievance procedure and had participated in the resolution of numerous disputes from the time of his appointment until September, 1966, Local 13's familiarity with Bulcke and the manner in which he discharged his appointed duties compel the observation and conclusion that objections to Bulcke, as well as to Kagel, if Local 13 had any, should have been made at a time earlier than in these proceedings. Under such circumstances, neither the method of appointing arbitrators nor the change in the manner of their appointment can imply a *Humphrey* discrimination in the union's representation of Velasquez' grievance.

As a further basis for suggesting that the ILWU breached its duty of fair representation, Local 13 charges that the arbitrators in this instance were personally known to the

presidents of PMA and the ILWU. This Court is compelled to reject such an argument in view of the reasons set forth in United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960). Recognizing that a labor arbitrator's source of law includes the practices of the industry and the shop—the industrial common law—as well as the express provisions of the collective bargaining agreement, the Supreme Court observed that an arbitrator is usually chosen on the basis of the parties' confidence in his familiarity with the problems inherent in the particular industry in the process of industrial self-government, and because of their expectation that his resolution of a particular grievance will reflect factors other than those expressly set out in the contract.[16] Contrary to the allegations advanced by Local 13, *Warrior and Gulf* suggests that it is unrealistic to expect that parties to a collective bargaining contract would surrender the arbitration responsibilities to persons with whom they are not acquainted.

B. The ILWU Did Not Breach Its Duty of Fair Representation by Referring to Velasquez as "Mickey Mouse" and by Offering to Handle "Extended Shift" Problems at the Coast or San Francisco Level Rather Than the Local Level.

Local 13 charges that Mr. Bill Ward, an officer of the ILWU, had a telephone conversation with Mr. Curt Johnston, then the president of Local 13, in November, 1964. Ward's inquiry about "Mickey Mouse", a common nickname for Velasquez, prompted a discussion of the issue of working extended shifts in view of Velasquez' association with this problem as a union officer and as a working longshoreman. Johnston commented that the problem still existed, and

16. United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 581-582 (1960).

Ward responded that the ILWU would handle that situation as well as "the mouse" at its San Francisco office. It is difficult to conclude that anything short of a distorted interpretation of this conversation would tend to establish that the ILWU officer's comments amounted to hostility toward one of its members or other breach of the duty of fair representation.

C. The ILWU Did Not Breach Its Duty of Fair Representation by Having Its President Attend or Not Attend Local Labor Relations Committee Meetings.

Local 13 has suggested that the ILWU breached its duty of fair representation because the president of PMA and the president of the ILWU did not customarily attend local labor relations committee meetings in Southern California but did attend the one on December 8, 1964, involving Velasquez' work stoppage on the S.S. President Quezon.

The organization and operation of the grievance procedure is set out in § 17 of the PCLA. It provides for numerous first step port grievance solving committees and for four area grievance solving committees. It is readily apparent that the president of the ILWU and the president of PMA could not and should not participate on a routine basis in the operation of these local committees. On the other hand, at critical times when large issues are at stake, one would ordinarily expect the chief executive officers of these organizations to personally interest themselves in local issues. The fact that the ILWU used its top official to represent Local 13 or Pete Velasquez in handling a grievance in no way implies that the ILWU breached its duty of fair representation in handling that grievance.

In view of the contract's coverage of longshore work in California, Oregon and Washington, it would be unrealistic

to expect these officers to participate in the meetings of local committees on a routine basis. The attendance of the chief executive officers of these organizations at the meeting which considered the charges against Velasquez, conducted after a work stoppage in which Velasquez, as a working longshoreman, refused to comply with an Area Arbitrator's on-the-job interim award, clearly indicates that they considered the grievance to be of particular importance. This Court is unable to draw any conclusion from the ILWU president's personal participation in the proceedings other than one indicating an interest in discharging his union's responsibility toward those within the bargaining unit.

D. The ILWU Did Not Breach Its Duty of Fair Representation in Evaluating PMA's Proposals Regarding the Procedural Handling of the Velasquez Complaints.

Local 13 asserts that Paul St. Sure, president of PMA made certain proposals regarding the procedural handling of the Velasquez complaints. Local 13 further asserts that the ILWU breached its duty of fair representation because it stated to Local 13 and officers of Local 13 at that time in a private caucus that Mr. St. Sure was a determined man when he had taken a hard and fast position. Quite obviously Mr. Bridges' evaluation of Mr. St. Sure, a man with whom he had frequent dealings for over twelve years, could hardly be said to be a breach of the ILWU's duty of fair representation.

E. The ILWU Did Not Breach Its Duty of Fair Representation by Reason of the Telephone Conversation Between Curt Johnston and Germain Bulcke on January 4, 1965.

Local 13 asserts the impropriety of a lengthy telephone conversation between Bulcke, the Area Arbitrator, and

Curt Johnston, then the president of Local 13, at the conclusion of the first day of the arbitration hearing. More specifically, it complains that, in encouraging Local 13 to continue with the arbitration and present a case in defense of Velasquez, Bulcke stated, "We know Pete Velasquez is guilty and he is going to have to receive some kind of penalty." It is indeed difficult to conclude that these comments tend to demonstrate in any way that the ILWU breached its duty of fair representation or engaged in a *Humphrey* type discrimination. Such statements, which in effect urged Local 13 to present the best possible case in behalf of one of its members, compel the conclusion that the Arbitrator was urging that the Union make an honest effort to serve the interests of each of its members without hostility or discrimination in spite of the futility of such an undertaking.

F. The ILWU Did Not Breach Its Duty of Fair Representation Because of the Statement Made by the President of the ILWU in April, 1965.

Local 13 asserts that Velasquez and Harry Bridges, president of the ILWU, engaged in a conversation at an ILWU caucus in April, 1965, in which Bridges emphatically criticized Velasquez' conduct, stated that the probable outcome of the Coast Arbitration would be his deregistration, and commented that he was the only person who would be able to help Velasquez in that event. In view of the Area Arbitrator's earlier finding that Velasquez was guilty of ten of the twelve charges presented, it is not at all surprising that Bridges was able to accurately predict that the Coast Arbitrator would order Velasquez' deregistration. The additional assertion that Bridges alone would be in a position to help Velasquez in the event that he was

deregistered was no more than a statement of the realities of organized labor. Admittedly the statement and predictions by Bridges were sternly issued and to the point, but it is not unrealistic to expect such candor between the president of a union and one of its members. It is a complete distortion to construe the comments as hostile or intimidating so as to come within the scope of Humphrey v. Moore, *supra*.

In view of the fact that Germain Bulcke had already found Velasquez guilty in eight out of ten complaints, it is not at all surprising that Harry Bridges could accurately predict that Professor Kagel would have no alternative under the PCLA but to deregister Velasquez. Mr. Bridges was suggesting that the ILWU would try to negotiate with the PMA to get Velasquez reregistered. The ILWU caucus, composed of all longshore locals on the Pacific Coast, ultimately took the course of action suggested by Mr. Bridges. These efforts were blocked by the filing of this suit by Local 13. These facts establish that the ILWU was trying to help Velasquez in the way it felt was most likely to succeed; they show no breach of its duty of fair representation of Local 13 or Pete Velasquez.

G. The ILWU Did Not Breach Its Duty of Fair Representation by Its Handling of the "Belly-Packing" Issue.

Local 13 complains that the ILWU in effect "dumped" Velasquez' grievance in favor of another matter then in the grievance process. More specifically, it complains that the president of the ILWU made certain statements from which it could be inferred that the international union was more interested in a favorable disposition of the "belly-packing" problem than in the issue of subjecting a union official to deregistration for repeated contract violations.

But this Court is not prepared to find a breach of the collective bargaining agent's duty of fair representation in its support of the position of one group of employees contrary to the interests of an individual worker whom it also represents. In Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) the Supreme Court found that the union had not breached its duty of fair representation in agreeing to an amendment of an existing collective bargaining contract, granting increased seniority to a particular group of employees and resulting in layoffs which otherwise would not have occurred.

> "Inevitably differences arise in the manner and degree to which terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Id., at 338.

Conflicts between employees represented by the same union are to be expected, but to preclude the union from exercising its discretion in an instance such as this would only weaken the collective bargaining process and the grievance machinery.

The record before this Court indicates that the ILWU, in acting to benefit the largest possible number of employees in the bargaining unit, made its election honestly, in good faith and without hostility or arbitrary discrimination. Accordingly, we are unable to conclude as a matter of law that the ILWU breached its duty of fair representation merely because it determined that a resolution of the "belly-packing" issue was more important to the bargaining unit than the Velasquez grievance.

There are no facts asserted, alleged or claimed that the choice was made by hostile or arbitrary discrimination or by dishonest or unfair motives or by any invidious, irrelevant or capricious action. In fact, the propriety of the ILWU's action, if it did what Local 13 says it did, is clear from Local 13's assertion that the choice in favor of the belly-packing issue was made because it involved more employees and was more important to the whole body of employees in the bargaining unit than the business agent issue.

H. The ILWU Did Not Breach Its Duty of Fair Representation by Reason of the Fact That PMA Carefully Considered Its Decision to Press Its Complaints Against Velasquez and Seek His Deregistration for Violations While Serving as a Union Business Agent.

Local 13 asserts that PMA's manager for the Southern California area commented that PMA's course of action—to pursue its complaints against Velasquez through the grievance procedure in an attempt to deregister him—was determined only after careful consideration. The short but effective answer to this line is that PMA was merely analyzing its labor relations policies, considering the effect of the implementation of those policies in this situation, and treating the Velasquez grievance as an important matter. The fact that PMA carefully considers its labor relation policies and the implementation of those policies in no way tends to show that the ILWU breached its duty of fair representation to Local 13 or Pete Velasquez.

I. The ILWU Did Not Breach Its Duty of Fair Representation by Acquiescing in the Kagel Arbitration.

Local 13 contends that the Kagel award was "flagrantly against Union principles" so that the acquiescence in it by

the ILWU, the ILWU caucus of longshore locals and Harry Bridges, was a breach of ILWU's duty of fair representation. Let us try to pass over the first assumption of this argument—that a labor relations arbitrator of national prominence would enter an award that gratuitously violated "union principles"—and examine the other aspects of the claim. We do not believe that any court is in a position to say that it has the expertise to evaluate collective bargaining strategy and union principles better than Harry Bridges and the entire longshore caucus of the ILWU. Certainly not this Court. But if we should feel that we could not avoid disposing of such an issue, we would have to recognize that the Supreme Court has repeatedly stated that unions have a broad area of discretion in carrying on their collective bargaining. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-339 (1953); Humphrey v. Moore, 375 U.S. 335, 349, 350 (1964); Vaca v. Sipes, 386 U.S. 171, 190-195 (Prelim. Print 1967); International Longshoremen's & Warehousemen's Union v. Kuntz, 334 F. 2d 165, 171 (9th Cir. 1964).

Yet it is not even necessary to rely on this discretion; the fallacy of Local 13's position is obvious. Plaintiff charges only that the ILWU is living up to its contract, for it provides that the arbitrator's award is final and binding in resolving disputes between the employees and the employers. To accept a "bad award", if we assume that the Kagel award is a "bad award", cannot be said to show hostile or arbitrary discrimination or dishonest or unfair motives or invidious, irrelevant or capricious action. "[A] breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious . . ." Vaca v. Sipes, *supra,* at 195. If anything can be inferred from an honorable acquiescence in the award of the Arbitrator, it is maturity in labor relations.

J. The ILWU Did Not Breach Its Duty of Fair Representation Because of a Conversation Between Germain Bulcke and Professor Kagel After the Kagel Award.

Plaintiff makes claims that the ILWU breached its duty of fair representation because Area Arbitrator Germain Bulcke talked to Coast Arbitrator Professor Sam Kagel after the decision of Kagel and stated that he, Germain Bulcke, was surprised at the severity of the penalty imposed by Professor Kagel. Local 13 further claims that Bulcke suggested that Kagel approach Bridges to see if Bridges would negotiate with St. Sure regarding reregistering Velasquez. These claims, if factual, have no relevance or materiality to the question of whether or not the ILWU breached its duty of fair representation of Local 13 or Pete Velasquez.

K. The Claim That the Award Is in Manifest Disregard of the Collective Bargaining Agreement and the Law Does Not Raise Any Breach of ILWU's Duty of Fair Representation.

It is well settled that where the parties to a collective bargaining contract have agreed to submit their disputes to final and binding arbitration, courts will not review the merits of any controversy so decided. Particularly, the court will not rehear or reweigh the evidence offered at the arbitration hearing. Nor will the court substitute its interpretation of the collective bargaining contract for that of the arbitrator. These principles have been stated by the United States Supreme Court in United Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

The provisions of § 17 of the PCLA are conceded by all to be part of the collective bargaining contract that applies to this controversy. By § 17.125 the Joint Port Labor Relations Committee is given the duty "to investigate and adjudicate any complaint against any longshoreman whose conduct on the job, or in the dispatching hall, causes disruption of normal harmony in the relationship of the parties hereto or the frustration and/or violation of the provisions of the working or dispatching rules or of this Agreement . . .". Section 17.24 provides that should the Joint Port Labor Relations Committee be unable to resolve the dispute, it may be immediately referred to the Joint Area Labor Relations Committee. Section 17.25 similarly provides that if the Joint Area Labor Relations Committee cannot resolve the dispute, it may then be referred to the Area Arbitrator for hearing and decision. Section 17.261 provides, "[A]ny decision of a Joint Port or Joint Area Labor Relations Committee or of any Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee . . ." Further, § 17.27 provides that should the Joint Coast Labor Relations Committee be unable to agree on any question before it that question may be referred to the Coast Arbitrator for hearing and decision and continues, "[T]he decision of the Coast Arbitrator shall be final and binding." Section 17.51 provides, "[T]he powers of arbitrators shall be limited strictly to the application and interpretation of the Agreement as written . . . The arbitrators shall have jurisdiction to decide any and all disputes arising under the Agreement including cases dealing with the resumption or continuation of work." Section 17.53 provides in part. "[T]he arbitrators shall have power to pass upon any and all objections to their jurisdiction."

Clearly, the parties to the PCLA intended the grievance procedure with final and binding arbitration would be the

exclusive method for resolving disputes arising under that agreement.

Moreover, this Court is compelled to conclude that Section 11 of the Agreement expressly states the parties' intention, including the ILWU and its locals, that there shall be no work stoppages for the life of the Agreement and that, in the event of a grievance or dispute, the work shall continue in accordance with the Agreement.[17] And, as we have already seen, the grievance procedure set forth in Section 17 of the Agreement is the exclusive remedy for resolving all disputes or grievances.[18]

In view of the strong public policy in favor of utilizing grievance procedures to resolve disputes as well as the express language in the Agreement forbidding strikes or work stoppages, the commitment made by the ILWU in acquiescing in the award disciplining Velasquez for initiating and participating in work stoppages is clearly within the permissible area of a bargaining representative's discretion. Moreover, Local 13 has been unable to produce or cite any authorities suggesting that it is improper for unions to enter into commitments preventing work stoppages or subjecting those who participate in such disruptive activities to disciplinary action.

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17. Section 11, *Pacific Coast Longshore Agreement (1961-1966)*:
"11.1 There shall be no strike, lockout or work stoppage for the life of this Agreement.
"11.2 The Union or the Employer, as the case may be, shall be required to secure observance of this Agreement.
"11.3 How work shall be carried on.
"11.31 In the event grievances or disputes arise on the job, all men and gangs shall continue to work as directed by the employer in accordance with the specific provisions of the Agreement or if the matter is not covered by the Agreement, work shall be continued as directed by the employer.
"11.32. There will be no unilateral 'hip pocket' working or dispatching rules."

18. Note 5, supra.

Accordingly, and since the power of this Court to review the Arbitrator's award here at issue is limited by the rules enunciated in the cases cited above, we must conclude that plaintiff has not stated, alleged or claimed any facts whatsoever that would establish a cause of action for collateral attack upon the grievance procedure followed in this case and particularly upon the awards of the Coast Arbitrator and Area Arbitrator.

V

There is no genuine issue as to any fact material to the amended complaint herein. The amended complaint and each and every cause of action therein alleged fails to state a claim upon which relief can be granted. Plaintiff is not entitled to any relief under or by virtue of the amended complaint and, in particular, is not entitled to any order or judgment setting aside or vacating the Coast Arbitrator's award dated June 29, 1965, or the Area Arbitrator's award dated February 13, 1965, or either of them.

VI

There is no genuine issue as to any fact material to the cross-claim and counter-claim. Defendant, Cross-Claimant and Counter-Claimant Pacific Maritime Association is entitled to relief under and by virtue of the cross-claim and counter-claim and, in particular, is entitled to an order and judgment confirming and enforcing the Coast Arbitrator's award dated June 29, 1965.

ORDER

By reason of the foregoing Decision, Findings of Fact and Conclusions of Law, it is hereby ordered that judgment be entered herein granting summary judgment against

plaintiff and in favor of defendants upon the amended complaint herein, dismissing said amended complaint on the merits, and confirming and enforcing the Opinion and Decision of Sam Kagel, Coast Arbitrator, dated June 29, 1965.

Let judgment be entered accordingly.

Dated: December 20, 1967.

A. ANDREW HAUK

A. ANDREW HAUK
United States District Judge

Appendix I

to DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER DISMISSING COMPLAINT and GRANTING SUMMARY JUDGMENT

Nos. 65-1414-AAH, 65-1420-AAH
LOCAL 13, etc. v. PAC. MARITIME, etc., et al.

OPINION AND DECISION
OF
SAM KAGEL,
Coast Arbitrator

San Francisco, California
June 29, 1965

In the Matter of a Controversy
between
PACIFIC MARITIME ASSOCIATION,

Complainant,

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,

Respondent,

Involving Proposed deregistration
of Pete Velasquez, No. 3349.

ISSUE:

The issue in this case arises from a disagreement in the Coast Labor Relations Committee recited in Joint Exhibit 1, as follows:

"IN RE P. VELASQUEZ—REG. #31090 (LA 12-65)
The Commitee now has before it the complete record made at the local and area level of the grievance

machinery, including arbitration of the various complaints on which disagreement was reached. The record includes Minutes of Meeting of the Joint Longshore Labor Relations Committee, Los Angeles-Long Beach Harbor, Regular Meeting No. 194-64; Minutes of the Meeting of the Joint Area Labor Relations Committee, Los Angeles-Long Beach Harbor, Meeting No. 12-64; the Opinion and Decision of the Area Arbitrator (#5-65), dated February 13, 1965, with Reporter's Transcripts of Proceedings before the Arbitrator, dated January 4, 5 and 6, 1965; Referral of Dispute to Joint Coast LRC, LA 12-65, dated February 16, 1965; and Mr. Velasquez' Notice of Appeal to the Joint Coast LRC, dated February 23, 1965.

The Committee noted the Area Arbitrator found Mr. Velasquez guilty in ten of the twelve cases presented for decision. It was further noted that some of the decisions establishing guilt were based solely on Section 17 of the Basic Agreement, while others were based on Section 17 and the August 25, 1960 Memorandum of Understanding. The Coast Committee agrees the matter is before the Coast Committee on the ten rulings of violation of Section 17.

Based on the record before this Committee, the Employers contended that Mr. Velasquez, Reg. No. 31090, is guilty of repeated violations of Section 17 of the Pacific Coast Longshore Agreement (1961-1966), and solely under this Section 17, moved for his deregistration.

The Union members of the Committee voted 'no' and disagreement was reached."

AGREEMENT PROVISIONS:

The entire Agreement between the parties is applicable in this case. Specifically Section 17 is entitled "Joint Labor Relations Committee, Administration of Agreement and Grievance Procedures."

PMA'S POSITION:

That the International Union has a responsibility in regard to longshore locals which includes the action of local officers; that Section 18 is a "Good Faith Guarantee"; that the parties agree to observe the Agreement in good faith and "The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge"; that Section 11 provides that there shall be no strike or work stoppage for the life of the Agreement; that in case of grievances or disputes work shall continue; that Section 17 provides the exclusive remedy with respect to disputes; that pending investigation and adjudication of disputes work shall continue as directed and be performed as provided in Section 11; that Velasquez flagrantly ignored and violated the provisions of the Agreement, both as a working longshoreman and as a Union officer; that the Area Arbitrator found Velasquez guilty of violating the grievance procedure provisions in ten cases accruing over a period of seventeen months, nine of these cases occurring within a twelve-month period; that Section 17.81 provides that in an instance of deliberate repeated offenses a longshoreman can be deregistered.

UNION'S POSITION:

That it agrees that Section 17.81 must be read to include Union officers even though not specifically so stated; that evidence, though not supplied at the hearing before the Area Arbitrator, indicates that Case No. 5 does not in fact implicate Velasquez; that Case No. 6 does not charge a violation of Section 17 but of the August 25, 1960 Memorandum; that the Employers unilaterally violated the Agree-

ment when they sought to keep Velasquez from working as a longshoreman even though that violation was corrected by the Area Arbitrator; that the Area Arbitrator's decisions do not specify that Velasquez' violations were "deliberate"; that the cases are marginal cases; that the penalty of deregistration is too excessive a penalty.

DISCUSSION:

Area Arbitrator's Award of February 12, 1965:

The following is a summary of the cases decided by the Area Arbitrator:

Case No. 1: Velasquez found not guilty of refusing to work as directed.

Case No. 2: The disposition by the Joint LRC on the complaints filed in 1959 and 1960 do not sufficiently support the Employers' contentions that Velasquez is a continuous and repeated offender.

Case No. 3: Velasquez did violate Sections 11.21, 11.31, 17.82 and 18.1 of the current agreement.

Case No. 4: The contention of the Employers that this gang, acting in concert with Velasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M. in violation of Section 3.142 and Section 11, and delibrately created a work stoppage, is sustained.

Case No. 5: The Employers' motion that "the business agent, Pete Velasquez violated the contract and the August 25, 1960 Settlement Agreement, Paragraph 4(d)", is sustained.

(The Union now claims that Valesquez was not on duty on the date involved as business agent.)

Case No. 6: The motion made by the Employers that the business agent, P. Velasquez "caused and par-

ticipated in an illegal work stoppage" in violation of the August 25, 1960 Memorandum of Understanding, is sustained.

(The Union now argues that this decision was not a violation of the Basic Agreement between the parties.)

Case No. 7: Velasquez found to have violated Sections 11.13, 17.71 and 17.81 of the contract.

Case No. 8: Velasquez found guilty of creating a work stoppage in violation of the Agreement.

Case No. 9: Velasquez found guilty of violating provisions of Sections 11.2, 11.31, 15.1, 17.15, and participated in a refusal to work as directed thereby causing a work stoppage.

Case No. 10: Velasquez found guilty of creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71 and 17.81.

Case No. 11: Velasquez found guilty of misconduct and causing and participating in a work stoppage in violation of the Agreement.

Case No. 12: Velasquez found guilty of creating and participating in a work stoppage in violation of the Agreement.

Comment on Award:

The Area Arbitrator's Awards covered incidents during a seventeen-month period. If we exclude from consideration Cases No. 5 and 6, Velasquez was still guilty of agreement violations in eight cases. Virtually all of them involved violations in failing to use properly the grievance procedure and causing illegal work stoppages. Velasquez caused these violations when a working longshoreman, a steward or Union officer.

Standard of Conduct:

The Agreement is specific and clear as to the manner in which grievances are to be processed. And is specific in prohibiting illegal work stoppages.

All longshoremen, while working as such, are required to observe all of the terms of the Agreement. Union officers, including stewards, are bound by an even higher standard of conduct than might, in some circumstances, be required of a working longshoreman. Officers and stewards have the affirmative duty to enforce the Agreements as written.

Velasquez was at times a working longshoreman, a steward and a Union officer. He was familiar with the Agreement machinery to process grievances. He knew that illegal work stoppages were prohibited. Clearly the applicable provisions of the Agreements on these matters were repeatedly called to his attention. However, he persisted in a course of conduct for which no excuse can be accepted. Nor was any in fact offered.

It is argued that deregistration is not in line with other penalties provided for in the Agreement for such offenses as pilferage, etc. However, the parties themselves agreed that deregistration was a proper penalty. Section 17.81 provides in part that "Any employee who is guilty of deliberate bad conduct . . . through illegal stoppage of work . . . shall . . . for deliberate repeated offense [be] cancelled from registration."

For purposes of assessing a penalty this provision includes Union officers. They are employees only on leave when elected to Union office. They retain their rights under the Agreement. They also are bound by the obligations provided for in the Agreement to conduct themselves properly and not to cause illegal work stoppages.

This was clearly the intent of the parties derived from Section 17 and the tenor of the entire Agreement. The parties did not intend that a working longshoreman was to be prohibited from indulging in bad conduct and causing illegal work stoppages while at the same time a Union officer had an immunity as to such prohibited conduct. Or that the Union officer could escape the penalty that could beset a working longshoreman for such prohibited conduct. The Union concedes this.

The Area Arbitrator's Awards found Velasquez guilty in case after case of having violated Section 17 of the Agreement. Velasquez' course of conduct consisted of deliberate repeated offenses in causing illegal work stoppages. The penalty which the parties themselves wrote into the Agreement for such conduct is proper and appropriate in this case.

DECISION:

The Employers' motion to deregister Pete Velasquez, Reg. No. 31090, is granted and he shall be deregistered forthwith.

SAM KAGEL
Coast Arbitrator.

Appendix II

to DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER DISMISSING COMPLAINT and GRANTING SUMMARY JUDGMENT

Nos. 65-1414-AAH, 65-1420-AAH

Local 13, etc. v. PAC. MARITIME, etc., et al.

IN ARBITRATION PROCEEDINGS PURSUANT TO CURRENT PACIFIC COAST LONGSHORE AGREEMENT

#5-65
OPINION AND DECISION
of
GERMAIN BULCKE,
Area Arbitrator

Wilmington, California
February 12, 1965

IN THE MATTER OF A CONTROVERSY
Between
PACIFIC MARITIME ASSOCIATION,
Complainant,
and
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13,
Respondent.

ISSUE: Employers' Complaints Filed Against Pete Velasquez, #3349, (New No. 31090) Claiming Violations of Current Agreement.

"*These hearings* were held in the P.M.A. Conference Room on January 4, 5, 6, 1965, in accordance with an agree-

ment reached at the Joint Area L.R.C. Meeting #12-64, dated December 14, 1964. Appearances are recorded in the transcript.

The Minutes of the Joint Area L.R.C. Meeting #12-64 dated December 14, 1964, record that, "The Employers requested that a Court Reporter be utilized for a transcript of the hearings on complaints filed against P. Velasquez, #3349, which involve the Employer motion for his deregistration. Union held this request in abeyance."

At the beginning of this hearing, the Union stated that they did not believe a transcript should be made.

The Employers' position was that the dispute was of general significance (Section 17.64); that the formal procedure would be necessary to settle the issue, and a transcript should be made.

The Abitrator sustained the Employers' position, and a full and complete record of the proceedings was made by a Certified Shorthand Reporter.

It should be noted that shortly before the conclusion of the first day's session (January 4) the Union stated that, "Local #13 will not participate in any arbitrations in regard to Mr. Velasquez as he was employed as a Business Agent of the night side, representing Local #13 as an independent Business Agent, and we are not going to participate in arbitrations regarding these complaints." (TR P. 121)

The Employers then stated, "Under these circumstances, the Employers have no choice but to insist that in view of the flat refusal of the Union to participate in any further hearings of these disputes, that these hearings be continued on an ex parte basis." (TR. P. 125-126)

During the second day's hearing (January 5), Mr. MacEvoy for the Employers, stated, "We would then have to

ask the arbitrator to rule as to whether or not he will hear these cases ex parte. I believe that Section 17.61 is here involved." (TR. P. 170)

The Arbitrator ruled that in accordance with the provisions of Section 17.61, these hearings would be continued on an ex parte basis. (TR. P. 171, 172) Thus, the remaining 8 Employer complaints were heard on an *ex parte basis.*

It was agreed and understood that any findings made by the Arbitrator based on the complaints, testimony, and the record made in these hearings will deal only with Pete Velasquez and not with any other person or persons or gangs that may be named as being involved in the same situation. (TR. P. 202-203)

CASE #1 Involves Employer Complaint #212, Minutes of Joint L.R.C. Meeting #129-64, dated August 26, 1964, Item #14—Page 5, record as follows: "E.C. #212—P. VELASQUEZ, #3349, F. PATRICIO, #2993—REFUSAL TO WORK AS DIRECTED—S.S. GERINA, BERTH #231 — 7/11/64 — CRESCENT WHARF & WAREHOUSE COMPANY.

Messrs. Velasquez and Patricio, deckmen in M.U. #1 in #3 Hatch, were directed to work extended time to finish and sail vessel. They called replacements at 3:00 A.M., without sufficient reason. Their replacements arrived at 3:15 A.M., but were not accepted by the Employer. The men left the job, resulting in loss of the gang because of insufficient men to continue work. Disagreement reached."

Minutes of Joint L.R.C. Special Meeting #152-64, dated October 1, 1964, record that E.C. #212 was discussed; no agreement reached, and the complaint referred to the Area L.R.C. for disposition.

Minutes of Joint Area L.R.C. #12-64, dated December 14, 1964, record that disagreement was reached and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

Having carefully studied the lengthy record made (TR. P. 3-34), it is the Arbitrator's decision that Pete Velasquez had a reasonable and bona fide purpose for leaving the job and replacing himself at 3:00 A.M., and is not guilty of refusing to work as directed as claimed in E.C. #212.

CASE #2 The Employers submitted copies of Minutes of the Joint L.R.C. Meetings #35-59, dated April 7, 1959, and Joint L.R.C. #41-62, dated April 11, 1962.

Minutes #35-59 record the following:
"Sp. E.C. #61 complaint by West Coast Terminals against P. M. Velasquez, #3349, working aboard the S.S. JAPAN BEAR during the night shift of February 19, 1959. The complaint states that Pete Velasquez failed to show back on the job at 11:00 P.M., following the evening meal period. The remainder of the gang would not work with a replacement, and quit. *Disposition:* #3349 was reprimanded by the Union and instructed to report to future jobs on time."

Minutes #41-62 record the following:

"E.C. #386. This complaint was filed by Associated-Banning Co. against the Union business agent for violation of Section 16(B) of the Basic Longshore Agreement and the August 25, 1960 Settlement Document." The complaint states that the Union business agent boarded the S.S. LOCH LOYAL at Berth 190 on September 11, 1960 without notifying company supervision

that he was on the job. The Committee agreed the contract provision must be complied with. The provision states that: "In order that the Employer may cooperate with the business agent in the settlement of disputes, the business agent shall notify the representatives designated by the Employers before going on the job."

"The Committee agreed that on the basis of this understanding, the complaint is resolved."

OPINION AND DECISION:

The record shows that the purpose for the introduction by the Employers of the Minutes of L.R.C. recording the disposition of the complaints filed against Pete Velasquez as a part of his work record, was to establish the Employers' contention that he is a continuous and repeated offender.

It is the Arbitrator's opinion and decision that the Minutes of the L.R.C. clearly record that the Joint L.R.C. Committee had agreed that Pete Velasquez had been found to have violated the provisions of the Longshore Coast Agreement and as such it becomes part of his work record. However, the disposition by the Joint L.R.C. on the complaints filed in *1959* and *1960* do not sufficiently support the Employers' contention that Pete Velasquez is a continuous and repeated offender.

CASE #3 E.C. #373—Minutes of Joint L.R.C. Meeting #194-64, dated December 3, 1964, record the following:

"E.C. # 373—U.C. # 634—GANG # 55—REFUSAL TO WORK AS DIRECTED—S.S. PRESIDENT QUEZON, BERTH # 144—12/1/64, MARINE TERMINALS CORP.

The Employer complaint states that: Gang # 55 was turned to at 6:00 P.M. on the PRESIDENT

QUEZON and assigned to work in # 4 hatch. They refused to work this hatch, demanding that the midshift boom be given a static test, due to the fact that the day gang had dropped the boom at approximately 8:00 A.M. that morning. Gang # 55 was shifted to # 6 hatch while a Special L.R.C. Meeting was held to discuss the validity of the gang's claim that the gear was unsafe to work. After the committee had reached disagreement with respect to the safety of the operation, an arbitration was held. The Arbitrator ruled that the boom was not unsafe and the men were to turn to and work as directed by supervision. The men were directed to turn to at 11:00 P.M. and refused, resulting in each man being fired for refusing to abide by the Arbitrator's decision to work # 4 hatch as directed by supervision, thereby creating a work stoppage and delaying the departure of the vessel. Disagreement reached, and referred to Area L.R.C."

Minutes of Joint Area L.R.C. # 12-64 dated December 14, 15, 1964 record that disagreement was reached on E.C. # 373—U.C. # 634, and following disagreement, the Employers referred complaint to arbitration.

OPINION AND DECISION:

The position and contentions of the parties regarding the above noted complaints was discussed at great length during these hearings (TR. P. 66-118). Having considered the record made, it is the Arbitrator's decision that Pete Velasquez by his actions *did violate* Sections 11.21, 11.31, 17.82 and 18.1 of the Current Agreement.

CASE #4 E. C. #363—IMPROPER ORDERING OF REPLACEMENTS — S.S. MICHIGAN 11/23/64 — CRESCENT WHARF & WAREHOUSE COMPANY.

The Minutes of Special L.R.C. # 189-64 record that the issue was discussed but no agreement reached.

The Minutes of the Joint Area L.R.C. record that disagreement was reached on E.C. # 363, and following disagreement the Employers referred the complaint to arbitration; also, following discussion of several tentative dates, the committee agreed that an arbitration hearing would be scheduled starting at 10:00 A.M. Monday, January 4, 1965.

At this hearing, January 4, 1965, it was stated that the above noted minutes had not been signed. The parties, in accordance with a suggestion made by the Arbitrator, held a meeting on the morning of January 5, in order to get minutes acceptable to both sides. They were not successful. The following statement was made by Mr. MacEvoy for the Employer: "It is unfortunate that the parties were unable to reach agreement on the minutes, the draft minutes of meeting of November 24, but we believe that the case can be heard on the basis of a stipulation by both parties that the case has been heard at the local level and has been heard at the Area level on December 14, and the Employers would offer this stipulation if the Union is willing to so stipulate."

Mr. Johnston: "All right." (TR. P. 130-131)

The Employers stated that, "In the case of the S.S. MICHIGAN, we have an Employer complaint, E.C. # 363, filed by Crescent Wharf & Warehouse Company, dated November 24, 1964,

involving a dispute on the S.S. MICHIGAN at Berth Long Beach 4. The complaint states, after listing the names and work numbers and categories of the men in Ship Gang # 55, including hatch tender, winch driver, four holdmen, four swingmen and two frontmen: 'The above men were directed to work extended time to finish the vessel for sailing. They all called replacements for 3:00 A.M. The replacements were not accepted by the Employer and the above men refused to continue work and walked off the job.' (TR. P. 131)

"It is the Employers' contention that this gang, acting in concert, with Mr. Velasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M., in violation of Section 3.146, and Section 11 and deliberately created a work stoppage aboard the vessel." (TR. P. 136)

OPINION AND DECISION:

The above case, E.C. 363, was discussed at great length (TR. P. 131-170). The Arbitrator noted that a copy of a letter was submitted by Mr. Velasquez as the reason why he deemed it necessary to replace himself at 3:00 A.M. The letter reads as follows:

"Dear Sirs: This is to verify that Mr. and Mrs. Pedro Velasquez had an appointment with me on November 24, 1964, at 9:00 A.M. This appointment was made November 22, 1964, and was kept by Mr. and Mrs. Velasquez. Sincerely yours, Roy Shaw, Real Estate, Donald W. Shaw. Dated December 10, 1964." (TR. P. 141)

The record, however, clearly shows that the gang, including P. Velasquez, had taken the position that they did not intend to work extended time, but would only work to fulfill the eight-hour guarantee.

The contention of the Employers that this gang, acting in concert, with Mr. Velasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M. in violation of Section 3.142, and Section 11, and deliberately created a work stoppage, *is sustained.*

It must be noted that all the remaining cases were heard *on an ex parte basis.*

CASE #5 E. C. #196—REFUSAL TO WORK AS DIRECTED—S.S. KOREAN BEAR BERTH S.P. 91, S.S. PRESIDENT HAYES, BERTH S.P. 93-B 8/4/63—ASSOCIATED BANNING COMPANY.

Minutes of Joint L.R.C. Sp. Meeting # 192-63, November 12, 1963, record that disagreement was reached and the complaint referred to Area L.R.C.

Minutes of the Area L.R.C. Meeting # 2-64, February 21, 1964, on E.C. # 196, record that: "The Committee agreed that in accordance with Section 3.143, men and/or gangs may be ordered to shift from a job or ship where they have not completed their original assignment to permit a late start on another job or ship or in order to fill out the 8-hour guarantee, or in order to finish the second ship for shifting or sailing. The Committee also agreed that the men involved in this complaint were obligated to shift to the S.S. PRESIDENT HAYES for working an extended shift in order to finish this vessel for sailing.

"Employers moved that the business agent, Pete Velasquez, violated the contract and the August 25, 1960 Settlement Document, Paragraph 4(d) by improperly directing the men to leave the job, thereby precipitating the work stoppage on this job. The Employers moved that the four

men involved, and the Union business agent, Pete Velasquez, be assessed the penalty of five days off all work with 40 hours added to their check-in time.

"The Union disagreed with the Employers' motion, stating it was their understanding the four men involved in this complaint were innocent victims of circumstances. Union stated a thorough investigation revealed that the men followed erroneous instructions.

"Following disagreement the dispute was referred to the Area Arbitrator for decision."

OPINION AND DECISION:

The record clearly shows that the Area L.R.C. agreed that the four men involved should have shifted and worked to finish the second ship for sailing, and did violate Section 3.143. The statement by the Union that the men followed erroneous instructions issued by the business agent fully support the Employers' contention that the business agent improperly directed the men to leave the job, resulting in a work stoppage. The Employers' motion that "The business agent, Pete Velasquez, violated the contract and the August 25, 1960 Settlement Agreement, Paragraph 4 (d)" *is sustained.*

CASE #6 E. C. #30—REFUSAL TO WORK AS DIRECTED/WALK OFF—S.S. PRESIDENT McKINLEY, BERTH 93-B, 1/22/64, ASSOCIATED BANNING CO.

This complaint was discussed in the Joint L.R.C. Meeting # 15-64, February 5, 1964. The details are recorded in the minutes of that meeting and the Employers made the following motion that: "The Union business agent, F. Velasquez, be assessed the appropriate time off under Section

4(d) of the August 25, 1960 Memorandum of Understanding for causing and participating in an illegal work stoppage."

The Union voted "No" on the Employers' motion and the issue was referred to the Area L.R.C. for disposition.

The Minutes of the Joint Area L.R.C. Meeting # 5-64, May 6, 1964, record that E.C. # 30 was discussed and the Union voted "No" on the above quoted Employer motion, and the complaint was referred to arbitration.

OPINION AND DECISION:

The record made in this hearing clearly establishes that the business agent, P. Velasquez, failed to follow the steps of the grievance machinery. The motion made by the Employers that the business agent, P. Velasquez "caused and participated in an illegal work stoppage" in violation of the August 25, 1960 Memorandum of Understanding, *is sustained.*

CASE #7 E. C. #21—SHIP GANG #62—REFUSAL TO WORK SHORTHANDED—S.S. CALEDONIA STAR—BERTH 228 E, 1/15/64—MARINE TERMINALS CORP.

The Minutes of Joint L.R.C. Meeting # 8-64, January 22, 1964, record in detail the discussion on this complaint by the Committee; also, that the Employers made three motions on which the Union voted "No." The Committee agreed to refer the entire matter to the Area L.R.C.

The Minutes of Area L.R.C. Meeting # 4-64, April 30, 1964, record that following a review of Employer Complaint, E.C. # 21, the Employers repeated the motions made in the L.R.C.

Meeting # 8-64, 1/22/64, with the Union voting "No." The Employers referred the complaint to arbitration.

It was agreed in this hearing that only the motion dealing with P. Velasquez was before the Arbitrator (TR. P. 202-203). The motion reads as follows:

"That the business agent, P. Velasquez, be assessed the appropriate time off under Section 4(d) of the August 25, 1960 Memorandum of Understanding for causing and participating in an illegal work stoppage in violation of Section 11.31, Section 17.71 and Section 17.81 of the Contract."

OPINION AND DECISION:

The record made at this hearing fully supports the Employers' contention that the business agent, P. Velasquez, by his actions had violated Sections 11.13, 17.71 and 17.81 of the Contract. The above quoted motion made by the Employers as recorded in the Area L.R.C. Minutes # 4-64, April 30, 1964, *is sustained.*

CASE #8 E. C. #109—PETE VELASQUEZ, #3349, BUSINESS AGENT—CREATING A WORK STOPPAGE—S.S. MANKATO VICTORY—VIOLATION OF AUGUST 25, 1960 SETTLEMENT DOCUMENT, 3/24/64, MARINE TERMINALS CORP.

This Complaint was discussed in the Special L.R.C. Meeting #52-64, April 17, 1964. The minutes of that meeting record that disagreement was reached on the following Employers' motion:

"Employers move that Mr. Velasquez, #3349, be assessed the appropriate penalty for improperly instructing the gang, thereby disregarding the interests of the Employer and disrupting the normal harmony of the operation by creating a work stoppage in violation of Sections 11.31, 17.81, 17.83, and the August 25, 1960 Settlement Document. The Complaint was referred to Area L.R.C. for disposition."

The Minutes of the Joint Area L.R.C. #7-64, June 23, 1964, record that on E.C. #109 disagreement was reached, with the Union voting "No" on the above quoted Employer motion. "The Employers referred the complaint to arbitration."

OPINION AND DECISION:

The Minutes of the L.R.C. and Area L.R.C. and the record made in this hearing clearly establish that the business agent, Pete Velasquez, is guilty of creating a work stoppage in violation of the provision of the Current Agreement. The above quoted motion made by the Employers in the Area L.R.C. Meeting #7-64, June 23, 1964, *is sustained.*

CASE #9 E. C. #170—P. VELASQUEZ, NIGHT BUSINESS AGENT—CREATING A WORK STOPPAGE IN VIOLATION OF CONTRACT—S.S. KOHKA MARU, BERTH I.B. #28, 6/3/64—METROPOLITAN STEVEDORING COMPANY.

The Minutes of Joint L.R.C. Special Meeting #82-64, June 4, 1964, record that disagreement was reached on a motion made by the Employ-

ers in connection with the above quoted complaint (E.C. #170). The motion reads as follows:

"The Employers move that P. Velasquez, ILWU Local #13 business agent, violated the provisions of Sections 11.2, 11.31, 15.1 and 17.15, and by participating in a refusal to work as directed, thereby caused a work stoppage in violation of the August 25, 1960 Settlement Document, Section 4(d) and is subject to the appropriate penalty spelled out in Paragraph 4 of this Agreement.

"The Complaint was referred to Area L.R.C. for disposition."

The Minutes of Area L.R.C. Meeting #10-64, November 9, 1964, record that on the identical motion made by the Employers on E.C. #170, the Union voted "No" and the complaint was referred to arbitration.

OPINION AND DECISION:

The record made in this hearing shows that the Area L.R.C. in Meeting #10-64, November 9, 1964, agreed that in E.C. #168 and #169, the men involved in the refusal to work as directed on the S.S. KOHKA MARU, were found guilty and the complaints were "resolved with loss of wages for the remainder of the work shift as sufficient penalty in this case."

The above quoted action by the Area L.R.C. clearly establishes that the normal procedure for handling disputes was not followed by the business agent, P. Velasquez, and the motion made by the Employers in the Area L.R.C. Meeting #10-64, November 9, 1964, on E.C. #170, *is sustained.*

CASE #10 E. C. #50—P. VELASQUEZ, #3349, NIGHT BUSINESS AGENT — S.S. ORNEFJELL, BERTH T.I. 262, 1/10/64—MARINE TERMINALS CORP.

This complaint, E.C. #50, was first discussed in the Joint L.R.C. Meeting #52-64, April 17, 1964. The minutes of that meeting read in part that:

"Union business agent refused to permit gang to complete this work in accordance with Section 3.1362 of the Contract, thereby creating a work stoppage and delay to the vessel."

Also, "The Employers moved that Mr. Velasquez, Union business agent, be assessed the appropriate penalty for ordering this gang off the vessel, thereby creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71, 17.81, and the August 25, 1960 Settlement Document."

Disagreement was reached and the complaint was referred to the Area L.R.C. The complaint was discussed at several Area L.R.C. Meetings and following disagreement reached in Area L.R.C. Meeting #12-64, December 14, 1964, the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The record made at this hearing does establish the fact that the shifting of the gang from the PHILIPPINE PRESIDENT GARCIA to the ORNEFJELL under the existing circumstances resulted in a gear priority violation. The proper procedure was for the Union to file a complaint with the Joint L.R.C. The fact that the gang was transferred back

to the original vessel does in no way justify the action of the business agent in instructing the gang to refuse to continue working on the ORNEFJELL.

The motion made by the Employers as recorded in the minutes of the Joint L.R.C. Special Meeting # 52-64, April 17, 1964, "That Mr. Velasquez, Union business agent, be assessed the appropriate penalty for ordering this gang off the vessel, thereby creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71, 17.81 and the August 25, 1960 Settlement Document" *is sustained.*

CASE #11 E. C. #101—P. VELASQUEZ, #3349—MISCONDUCT, CAUSING AND PARTICIPATING IN A WORK STOPPAGE — S.S. MORMACWIND, BERTH 146 — 3/26/64, CRESCENT WHARF & WAREHOUSE CO.

The details of E.C. # 101 are recorded in the L.R.C. Minutes of Special Meeting # 28-64, 3/11/64, L.R.C. # 197-64, December 11, 1964 and Area L.R.C. Meeting # 12-64, December 14, 1964. The Area L.R.C. Minutes of Meeting # 12-64, December 14, 1964, record that disagreement was reached, and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The signed minutes of L.R.C. Special Meeting # 28-64, 3/11/64, clearly state that it was the Union's position that the teamsters were performing work in violation of Section 1.25 of the P.C.L.A.; further, that the Union business agent had stopped the teamsters from continuing the operation.

The transfer of the cargo from stevedore boards to teamster board by the teamsters was not in violation of the

Current Agreement but was in accordance with the provisions of Sections 1.25 and 1.44.

The claim by the Employers that P. Velasquez is guilty of misconduct and causing and participating in a work stoppage in violation of the Agreement *is sustained.*

CASE #12 E. C. #233—WORK STOPPAGE—S. S. INDIA BEAR, BERTH # 91, 7/29/64, ASSOCIATED BANNING COMPANY

The details of E.C. # 233 are recorded in the Minutes of L.R.C. Special Meeting # 121-64, August 12, 1964. Disagreement was reached and the Employers referred the complaint to Area L.R.C. for disposition.

The Minutes of Area L.R.C. Meeting # 12-64, December 14, 1964, record that disagreement was reached and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The record made in this hearing clearly supports the Employers' position that Mr. Velasquez created and participated in a work stoppage, by instructing Ship Gang # 9 to walk off the job in violation of the Contract.

The Employers' motion, recorded in the Minutes of L.R.C. Special Meeting # 121-64, August 12, 1964: "That Pete Velasquez, business agent, created and participated in a work stoppage by instructing ship gang # 9 to walk off the job in violation of the Contract and is thereby subject to the applicable penalties specified in the Pacific Coast Longshore Agreement and the August 25, 1960 Settlement" *is sustained.*

DATED: February 13, 1965.

/s/ Germain Bulcke
Germain Bulcke, Area Arbitrator

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. A-138

PACIFIC MARITIME ASSOCIATION, a California nonprofit corporation and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Petitioners,

vs.

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

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Petitioners,

vs.

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

Petitioners, Pacific Maritime Association (PMA), a California non-profit corporation that acts as the collective bargaining representative of the employers of longshoremen on the West Coast, and the International Longshoremen's and Warehousemen's Union (ILWU), the certified bargaining representative of these longshoremen, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on April 21, 1971.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 441 F.2d 1061, (App. B, 8-21). The decision and order of the district court is reported at 278 F.Supp. 755 (App. B, 22-56). The latter decision incorporates the arbitration award of the Coast Arbitrator under the ILWU-PMA collective bargaining contract dated June 29, 1965 (App. B, 57-63) and the award of the area arbitrator dated February 12, 1965 (App. B, 64-80).

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 21, 1971, and a timely petition for rehearing was denied on May 14, 1971. Time to file this petition for certiorari was, on August 3, 1971, duly extended by Mr. Justice Blackmun to October 9, 1971. The time to file this petition was duly extended to October 11, 1971, a legal holiday. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. May a court, by summary judgment after full hearing, confirm an arbitration award for the discharge of a workman under a collective bargaining contract where no substantial evidence is offered to show hostility of any type against the individual discharged and there is no claim of invidious discrimination?

2. May a discharged workman obtain a full-dress trial of his claim that the arbitrator sustained his discharge by erroneously determining the meaning of the collective bargaining contract if his affidavits, in the summary judgment process, make no claim of invidious discrimination and assert only that officials of his union said that he had been violating the contract, that he had thereby given the union

problems in meeting its obligation that there be a good faith observance of the contract by him and all other union members, and that he had a very weak grievance?

3. Is the binding character of an arbitration award sustaining a discharge under a collective bargaining contract vitiated because the union, in processing a number of grievances in arbitration, exchanges a possible contract interpretation claim that arguably has some merit and is of general application, but which is determinative of one employe's pending grievance, in order to get a successful resolution of another contract interpretation issue of much greater importance that affects many employes within the bargaining unit?

4. When a court is asked to confirm an arbitration award discharging a workman on the basis of an interpretation of a collective bargaining contract and is asked by the workman to set aside the arbitration award because the union has allegedly shown "hostility" to him in presenting his discharge grievance, should it grant a summary judgment enforcing the award if the workman fails to show that there has been a contract violation?

STATUTES, FEDERAL COMMON LAW, AND RULE INVOLVED

Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156 (29 U.S.C. § 185) reads in pertinent part:

> "Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States . . .".

The law to govern the courts in their exercise of jurisdiction under § 301 is the federal common law in this area of labor relations, "which the courts must fashion from the policy of our national labor laws". The problems involved will be "solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy".

State law, if compatible with the purpose of § 301, "may be resorted to in order to find the policy that will best effectuate the federal policy". *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 456, 457 (1957); *Dowd Box Co. v. Courtney,* 368 U.S. 502, 514 (1962). The federal law as to the enforcement of arbitration awards in Title 9 of United States Code (App. A, 1-3) and the California Code of Civil Procedure provisions on enforceability of arbitration awards (App. A, 3-4) are among such sources of the federal common law applicable in this case.

Rule 56(b) of the Federal Rules of Civil Procedure (App. A, 6) provides that a party against whom a claim is asserted may move for summary judgment. Rule 56(c) of the Federal Rules of Civil Procedure (App. A, 6) provides that such motion shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law".

STATEMENT OF CASE

This case arises out of a discharge of a longshoreman, Pete Velasquez, from his job as a registered longshoreman under the ILWU-PMA collective bargaining contract covering longshore work in California, Oregon and Washington. The discharge was ordered by the Coast Arbitrator's award of June 29, 1965, at the conclusion of the grievance-arbitration procedure of the contract. In September, 1965, Local 13 of the ILWU brought an action to set aside the arbitration award. Thereafter, a cross complaint to confirm the arbitration award was filed, and the complaint was amended to assert a claim of violation of contract.

Velasquez was a longshoreman in Los Angeles for many years. He was a member of ILWU Local 13, the longshore

local of the ILWU that admits to membership longshoremen working in Los Angeles. He held top seniority status in his job, being a Class A registered longshoreman from July, 1953, until his discharge. From time to time while working as a longshoreman he was given leaves of absence to act as a Local 13 rank and file business agent. Under Local 13's governing rules, only registered longshoremen can hold this job.

The ILWU-PMA collective bargaining contract provides that there shall be no work stoppages during the period of the contract. It further provides:

> "As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge."

It further provides that any longshoreman shall be discharged "for deliberate repeated offenses" causing the delay of vessels by illegal stoppages of work.

Velasquez committed deliberate offenses of causing the delay of vessels by illegal stoppages of work on February 19, 1959, (App. B, 67) and on September 11, 1960 (App. B, 67), before he was elected business agent in October, 1962. He committed further deliberate offenses, while a business agent, on August 4, 1963 (App. B, 72-73), January 10, 1964 (App. B, 78-79), January 15, 1964 (App. B, 74-75), January 22, 1964 (App. B, 73-74), March 24, 1964 (App. B, 75-76), March 26, 1964 (App. B, 79-80), June 3, 1964 (App. B, 76-77), and July 29, 1964 (App. B, 80). In October, 1964, Velasquez returned to being a working longshoreman.

Many of these work stoppages induced by Velasquez were refusals of longshoremen to work extended shifts, i.e. refusals to work beyond the normal number of hours in a shift in order to complete the loading of a ship so that it

can sail. An affidavit filed in support of Velasquez asserted that in November, 1964, a top level international official of the ILWU (Ward) talked to the president of ILWU Local 13 on the telephone. Ward asked whether the extended shift problem still existed and if Velasquez was in the hair of the Local 13 president. In response to an affirmative answer, Ward told the Local 13 president not to worry and that the ILWU in San Francisco would take care of Velasquez and the extended shifts problem.

Thereafter, Velasquez caused the delay of vessels by illegal stoppages of work on November 23, 1964 (App. B, 70-72) and December 1, 1964 (App. B, 68-69). Early in December the question of his discharge was taken into the grievance machinery at Los Angeles. The international president of the ILWU, Harry Bridges, and the president of PMA were present at one stage of the grievance procedure in Los Angeles.

Arbitration proceedings were held at the area level, with Local 13 representing Velasquez at these proceedings. The area arbitrator held that Velasquez had engaged in deliberate offenses of causing the delay of vessels by illegal stoppages of work on the 12 occasions specified above (App. B, 68-80). Local 13 appealed the award to the Coast Arbitrator. It is admitted that Velasquez was fairly represented with respect to the Area Arbitrator's decision on the factual issues.

After the area arbitrator's award was issued, Harry Bridges, the president of ILWU, had a conversation with Velasquez in the spring of 1965. Local 13 submitted an affidavit stating (R. 202-203) that Bridges said:

> "Velasquez, you might as well get it straight. You're through, you're done. You're all washed up. The only chance you've got is me. If this goes to the Arbitrator,

> Sam Kagel, you're through. I am God damn tired of your bull shit and all of your phony beefs. You better get it straight: You're done, you're through, you're washed up. I am the only one who can save you."

Shortly thereafter the grievance went to Sam Kagel, the Coast Arbitrator, on the appeal of Local 13.

The ILWU handled the hearing before the Coast Arbitrator. The ILWU asserted that the activities on August 4, 1963 and January 22, 1964 (Cases 5 and 6) should not be charged against Velasquez. The Coast Arbitrator held that on at least eight occasions over a period of 17 months Velasquez was guilty of deliberate offenses causing the delay of vessels by illegal work stoppages while a working longshoreman, a shop steward, or a Local 13 rank and file official (App. B, 61).

Local 13 claimed that the actions taken while an official of Local 13 could not be considered in determining whether Velasquez was guilty of "deliberate repeated offenses". The ILWU, however, agreed with the position of the employers that the contract applied to activities of a registered longshoreman while on temporary leave of absence to serve as a rank and file union official. The ILWU argued that discharge was not the proper remedy. The Coast Arbitrator interpreted the contract provision – as to which Local 13 was in disagreement with the International and the PMA – and concluded that the contract provisions prohibiting illegal work stoppages applied to the officers and rank and file business agents of the union (App. B, 62-63). The Coast Arbitrator held (App. B, 63):

> "Velasquez' course of conduct consisted of deliberate repeated offenses in causing illegal work stoppages."

He further found that Velasquez had knowledge that illegal work stoppages were prohibited, that he had persisted in

a course of conduct repeatedly and deliberately causing such work stoppages, and that no excuse was offered (App. B, 62). He held that Velasquez was discharged (App. B, 63). At the same time – on June 29, 1965 – an award was issued in favor of the longshoremen on a "belly-packing of sacks" issue.

The longshore locals of the ILWU met in a caucus in August, 1965. Local 13 submitted a motion that the ILWU reject the award. This motion was voted down (App. B, 51).

After the Coast Arbitrator's award, according to an affidavit filed by Local 13, Bridges told some longshoremen that the Velasquez case was important to only one man and that another issue, as to "belly-packing of sacks", was important to many within the bargaining unit. He is said to have explained that it became necessary for the ILWU to give up a possible argument on the issue that was decisive in the Velasquez grievance in order to win the more important grievance affecting many men within the bargaining unit.

In September, 1965, Local 13 filed a complaint to set aside the award. It made a variety of factual assertions to support its claim that Velasquez was not bound by the arbitration award. It also argued, again, that under the contract a longshoreman's deliberate offenses in causing illegal work stoppages while a rank and file union official could not be considered in determining whether the longshoreman had committed repeated and deliberate offenses in causing illegal work stoppages.

The trial court confirmed the award by a summary judgment under Rule 56(c), F.R.C.P.[1] Its underlying finding

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1. Rule 56(c) provides in part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

(App. B, 27) was that there was no genuine issue as to any material fact that would establish any cause of action for plaintiff. The finding was entered after full hearing.[2]

The court of appeals reversed. It rejected the finding of the district court, which (at the very least) was not a clearly erroneous finding (cf. Federal Rules of Civil Procedure, Rule 52; App. B, 4). This rejection sets up the basic legal issue presented by this petition. It also held in purported reliance of *Poller v. Columbia Broadcasting System*, 368 U.S. 464 (1962) that, in view of its reading of the record, summary judgment was improper (App. B, 21).

The court of appeals stated that the conversations of November, 1964, and the spring of 1965 could possibly raise an implication of hostility (App. B, 17-20) and held that a full-scale trial would be necessary to determine whether there was "hostility" against Velasquez and to determine whether the interpretation of the relevant contract language was "in itself so unreasonable as to lend support to an inference of bad faith" (Note 10; App. B, 19). It further stated (Note 11; App. B, 19):

> "What we hold is that a union may not agree with an employer, either expressly or tacitly, to exchange a meritorious grievance of an individual employee for some other supposed benefit."

Finally, it asserted that it did not believe that it was appropriate to issue an order confirming an arbitration award "in a suit in which the only controverted issues concern an unsuccessful attempt by a third party to attack the award collaterally" (Note 13; App. B, 21).

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2. The court's record included a jointly approved comprehensive pre-trial order, detailed statements by Local 13 of its factual claims in response to interrogatories and requests for admissions, extensive briefs, and oral argument on several days. Local 13 had "repeated opportunities to state and to expand upon its factual claims both in writing and in oral presentation" (App. B, 27).

REASONS FOR GRANTING WRIT

I

As a result of the collective bargaining process, individual workmen have obtained substantial rights and benefits. They have necessarily given up individual opportunities to get specific benefits beyond the collective bargaining agreement in order to be a beneficiary of the collective bargaining contract that applies to them and all others in the bargaining unit. *J. I. Case v. NLRB*, 321 U.S. 332, 337-338 (1944). Among the normal obligations that employes accept where they work under a collective bargaining contract is the obligation to refrain from strikes and work stoppages and to accept arbitration awards. Observance of the collective bargaining contract by employes, union officials, unions, employers, and employer representatives (like PMA) is necessary if collective bargaining is to work.

II

The decision of the court of appeals, if not reversed, would seriously disrupt the conduct of collective bargaining. A union must use discretion in determining how to proceed in grievances; it must be prepared to proceed vigorously at times; at other times it must dissuade an employe from presenting a grievance if it has little merit or if it will adversely affect the interests of the bargaining unit as a whole.

"In administering the grievance and arbitration machinery as statutory agent of the employees, a union must, in good faith and in a non-arbitrary manner, make decisions as to the merits of particular grievances. See *Humphrey v. Moore*, 375 U.S. 335, 349-350; *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-339." *Vaca v. Sipes*, 386 U.S. 171, 194 (1967). *Vaca* further states (386 U.S. 195):

> "[A] breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious. . . ."

The opinion below is in clear conflict with the principle of these opinions that the federal courts are not going to review arbitration awards, are not going to substitute their judgment for the judgments of arbitrators, and are not going to determine whether grievances are "meritorious", much less determine whether the union's judgment on the exchange of one issue for another issue was good, bad or indifferent.

III

This Court should grant certiorari to establish that the remedies available with respect to discharges are speedy. This Court should define the applicable common law, now, as to motions for summary confirmation of arbitration awards under collective bargaining contracts.[3] That law should not permit full scale trials on flimsy issues. A summary judgment of the district court to confirm the arbitration award on the basis of the record presented is, we urge, the proper remedy under § 301 where an arbitration award has been entered and there seems to be some possibility that it will not be observed by all involved. The labor policy of

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3. The summary processes for the confirmation of arbitration awards should have been applied. California Civil Code provisions (App. A, 3-4) and the United States Code provisions on arbitration awards (App. A, 1-3) would seem to be appropriate guides. They clearly suggest that it is the proper labor policy of the United States to dispose of issues of this type by summary process unless a prima facie case of improper conduct and of contract violation is established. The rules as to the summary judgment procedure in complex antitrust litigation cf. *Poller v. Columbia Broadcasting System*, 368 U.S. 464 (1962) or in civil rights litigation *Adickes v. Kress & Co.*, 398 U.S. 144 (1970) should not apply in determining whether or not an arbitration award is to be enforced or set aside in labor relations affairs.

the United States requires that it be established that such arbitration awards will be promptly observed by all involved. If this not be the law, all of those participating in labor relations need to know what the law is.

The court below erroneously applied a doctrine of summary judgment law that has peculiar application to complex antitrust litigation. Such litigation moves slowly. It is essential in labor relations litigation, in sharp contrast with antitrust litigation, that there be a speedy determination of the issues. The problems of labor relations require that there be compliance by the parties with arbitration awards almost as a matter of rote.

Particularly important is this need for a speedy confirmation of an award where its effect is to prevent work stoppages and to encourage use of the arbitration process as a means of solving disputes.

IV

The decision of the court of appeals will, if not reversed, destroy the basic labor relations policy of the United States that the use of the arbitration process and the observance of a no-strike commitment that goes hand-in-hand with the arbitration process, are fundamental to collective bargaining in our society. The court below has cited the sound principles as to invidious discrimination developed out of *Steele v. Louisville & N.R.R.*, 323 U.S. 192, 209 (1944), but has stretched them far beyond their applicable scope.[4] Thus the opinion below has the effect of washing out the body of law established by this Court in the Steelworker

4. Excerpts from *Humphrey v. Moore*, 375 U.S. 335 (1964) and *Vaca v. Sipes*, 386 U.S. 171 (1967) are quoted but without consideration of the fact that neither case involved an arbitration award or a decision as to contract meaning that was eminently sound and required by the contract language.

trilogy cases[5] holding that the arbitration process is the cornerstone of the federal labor policy as to collective bargaining.

The decision below requires full-dress court trials to review almost any award of an arbitrator in a discharge case. The opinion below permits courts to review such awards where no substantial question is raised as to the representation provided by the union in presenting the case of the discharged employe to the arbitrator and where there is no colorable claim that the contract was violated by the arbitrator's contract interpretation that served as the basis for the decision against a discharged employe. Almost every unhappy litigant in a collective bargaining arbitration will find as much to complain about in the frame of reference of his discharge as has Velasquez. The federal courts cannot review the many arbitration awards that can be attacked on trivial grounds as weighty as those offered here.

Collective bargaining in the United States will not serve its function if the union must make a "federal case" out of every discharge, if it must seek to frustrate the employer's efforts to establish the facts that the union knows to be true, or if it must argue that the contract supports every claim of the person it represents, even when it knows full well that the agreement made with the employer was that a person who did what the grievor did was to be discharged.

V

The Court should clarify the common law in this area of labor relations to state whether an employe must both show a contract violation and a breach of the duty of fair representation if he is to set aside an arbitration award that holds

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5. *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

he has been in violation of the contract. We believe that the law presently is that Velasquez cannot prevail unless he shows that there was a violation of the collective bargaining contract in his discharge. Without such a violation, no cause of action under § 301, 29 U.S.C. § 185, is stated.

It is of major importance to the administration of labor relations, and to the common law of the shop, that all labor unions and employers of organized workers know whether or not arbitrators' awards under their collective bargaining contracts are going to be confirmed by summary judgment unless the disappointed party shows both the "hostility" or "discrimination" necessary to invalidate the normal finality of the arbitration process and also a contract violation.[6]

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Respectfully submitted

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6. In this case there is no merit in the weak suggestion of the court below that the arbitrator's contract interpretation might not be correct (n. 10, App. B, 19; quoted at 9 supra). The arbitrator considered Local 13's claims as to the contract's meaning and cogently enunciated the basis for his contrary interpretation of the contract (App. B, 62-63). No court should reverse the interpretation concurred in by the PMA, the ILWU top officials, the ILWU body of longshore locals in caucus assembled and the standing arbitrator, a labor relations law professor of national repute with fifteen years experience as arbitrator under this contract.

As the contract interpretation is of general significance and applies to officials of all locals and the International and is objected to by Local 13 because of its current effect on others than Velasquez (R. 413), this general agreement on the contract interpretation is particularly persuasive.